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ABSTRACT

This paper analyzes educational and social forces that prevent black males from achieving in school and policies that separate black males by race and gender from the general school population. The policy, social, and legal ramifications of plans for at-risk black male students in New York City, Baltimore (Maryland), Milwaukee (Wisconsin), and Detroit (Michigan) are discussed. Focus is on determining whether school boards need to separate children on the basis of race, thereby abandoning the integration ideal of the Civil Rights Movement, and whether black boys need to be separated from girls in order to learn. Part I discusses the state of black America today; shows reasons why the educational system must change to save black males and the black community; and shows that the current system does not work as evidenced by the levels of blacks in politics, economics, business, and poverty. Part II discusses whether or not integration helped blacks; shows that many blacks are still in segregated schools and that those who attend integrated schools are systematically tracked into low achievement classes; examines statistics showing that blacks have not caught up to whites and some may be worse off educationally now than in 1954; and describes Afrocentric education in terms of revamping curricula. Part III critically describes the two most controversial plans (in Detroit and Milwaukee), citing legal challenges to the plans and how schools have fared. Part IV explores public sentiment, and includes interviews with desegregation and sex segregation experts, psychologists, teachers, principals, and researchers. Part V describes an ideal school. (RLC)

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SINGLE-SEX, SINGLE RACE PUBLIC SCHOOLS: A SOLUTION TO THE PROBLEMS PLAGUING THE BLACK COMMUNITY?

An analysis of the educational and social forces which prevent black males from achieving in school and the policy to separate them by race and gender from the general school population.

Marcia L. Narine
April 15, 1992

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INTRODUCTION

Today education is perhaps the most important function of state and local governments . . . It is required in the performance of our most basic public responsibilities. . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.- Brown v. Board of Education, 347 U.S. 483 at 493 (1954).

Thirty eight years after the Supreme Court decided Brown v. Board of Education, black children still lag significantly behind white children in academic achievement.[1] Statistics show that there is a correlation between educational achievement and future success. Thus, since black children, and especially males, do not achieve as highly as whites in education, it follows that black males will not achieve as highly as whites in other areas. In recent years, "black achievement," or the lack thereof, has captured national attention. In fact, in the past three years both the NAACP and the U.S. Congress held conferences on the "endangered African-American male." [2]

Over the past few years, educators have struggled to find solutions to the problems plaguing black males. School boards across the country have devised unique experiments including curriculum changes and after-school programs. However, none of the programs have caused as much controversy in the civil rights, legal and educational arenas as the proposals to separate Black males from the general school population.

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[1] For example, black children score an average of 200 points lower than white children on SATs and receive fewer A's and more F's than do white students. See Section on Black students and Integration infra.

[2] See Barriers and Opportunities for America's Young Black Men: Hearing Before the House Select Committee on Children Youth and Families. 101st Congress, 1st Session (1989). See also NAACP Legal Defense and Educational Fund, Statement on Proposals for Separate Schools for African American Male Pupils. (1990).

According to many school board members and teachers in New York, Baltimore, Milwaukee and Detroit, the traditional methods of education have failed to meet the needs of black boys. This failure has contributed to drop-out, unemployment, poverty and murder rates that exceed those of whites. Many educators argue that a program which uses black male teachers and a more diverse curriculum would make boys more interested in learning and would help to narrow the gaps which exist between blacks and whites.

The New York school board has authorized study of the Ujaama Institute, which would serve approximately 300 minority high school students in Manhattan. The school is scheduled to open in September 1992.[3] In Baltimore, Dr. Spencer Holland's Project 2000 male role models spend a half day each week in all-male first and second grade classes, taught by men.[4] Currently, three schools have all-male classes, and the schools have recently added all-female classes. In September 1991, Milwaukee opened a co-ed African-American immersion school, which includes African Rites of Passage programs as a standard part of the curriculum.[5] Finally, the Detroit plan, which would have been opened to all races, but excluded girls, planned to use male role models and all-male schools to stem the rising drop-out rate among its black boys.[6]

While the New York, Baltimore, Milwaukee and Detroit plans differ in scope and size, all focus on at-risk young boys. All plan to use role models and an Afrocentric or multicultural curriculum to instill pride in black culture and to provide a balance to the

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[3] Personal Communication with Mr. Basir McChawi, coordinator of the curriculum for the Ujaama Institute, January 27, 1992.

[4] Personal Communication with Mr. Spencer Holland, Director of Project 2000, January 27, 1992.

[5] Personal Communication with Mr. Ken Holt, architect of the Immersion School and Principal of the Parkman Middle School in Milwaukee, February 26, 1992.

[6] Detroit School Board, Male Academy Grades K-8. A Demonstration Program for At Risk Males (DRAFT) December 7, 1990.

mainstream curriculum. The Baltimore all-male classes, which have shown marked success in just two years, have been praised around the country.

However, not all educators or civil rights groups agree that separating black boys will solve the crisis in the communities. The NAACP, NOW, ACLU, Children's Defense Fund, National Education Association and the American Federation of Teachers, among others, have publicly criticized the plans as promoting racial and sexual discrimination, limiting diversity and stigmatizing the black boys. In addition, they argue that alternative educational programs do exist which have succeeded without segregating black boys from other students.

In August 1991, federal judge George Woods declared that the Detroit plan was illegal because it denied girls equal protection and violated Title IX of the Education Amendments of 1972, which prohibit single sex federally funded schools. Despite widespread public support, the Detroit school board decided not to appeal the judge's decision and has admitted a small number of girls to the "academies." The other programs have not been subject to legal challenge in their present form, though many in the legal community continue to protest.

Despite the Detroit Board's decision to abide by the judge's decision, this paper will examine the policy, social, and to a lesser extent, legal ramifications of the plan and others like it. This paper will have two foci. First, do school boards need to separate children on the basis of race, thereby abandoning the integration ideals of the civil rights movement? And, second, do black boys <u>need</u> to be separated from girls in order to learn? To answer these legal and policy questions, we must look at the state of blacks in America today, how black children, and particularly males, are faring educationally in integrated and segregated schools, and what programs <u>have</u> attempted to do and are <u>currently</u> attempting to do to educate black boys.

I will argue that though the plans may not be able to pass constitutional scrutiny, school boards should be allowed to

implement them for two policy reasons. First, elected school boards should, after completing thorough study, have the autonomy to devise experimental plans which they believe can solve the unique problems that their children face. Second, and more importantly, poor parents and children, who must utilize the public school system, should have the right to choose single sex schools if they believe that they offer a promising alternative to the traditional coed public schools.

In Part I, I will discuss the state of black America today, and why so many people believe that the educational system must change to "save the black male" and the black community in general. By looking at the levels of blacks in politics, economics, business and poverty, one can see that the current system does not work. In Part II, I will discuss whether or not integration actually helped blacks. I will show that many blacks are still in segregated schools, and that those who attend integrated schools are systematically "tracked" into low achievement classes. I will examine the statistics which show that blacks have not caught up to whites, and that some, in fact may be worse off educationally now than in 1954. Finally, I will discuss Afrocentric education, a critical component of the Milwaukee and Detroit plans, as well as other school systems' plans to revamp the curricula.

In Part III, I will look critically at the two most controversial plans- Detroit and Milwaukee's- and what they plan to accomplish. Then I will address the legal challenges brought by NOW and the ACLU, which charged that the Detroit schools violated Title IX, the Constitution and the spirit of Brown.[7] Next I will examine Judge Woods' decision, and what the Board could have argued on appeal. Finally, I will discuss how the schools have fared since they have opened both in Milwaukee and Detroit. In Part IV, I will explore public sentiment, both within and outside of the

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[7] I will only discuss the federal law ramifications of the academies and others which proposed to separate black boys, not the state laws.

educational community. This section will include interviews with desegregation and sex segregation experts, psychologists, teachers, principals and education researchers; and statements made by those in the civil rights community and government who oppose the ideas. Finally, in Part V, I will use what I have learned to describe an "ideal" school.

PART I- THE STATE OF BLACK AMERICA

THE STATE OF BLACKS IN AMERICA TODAY

Those who argue that black males are fast becoming an endangered species point to statistics which illustrate the plight of black men and the black community in general. They assert that blacks cannot compete with whites on an equal playing field in education unless their circumstances are equal in other respects. In this section, I will discuss the state of blacks nationwide to point out the disparities between blacks and whites, and to provide a backdrop to the educational theories which cite statistical evidence to bolster their positions.[8]

Politics

In the past 20 years, the number of black elected officials in the Unites States has risen from 1500 to 7370.[9] Voters in major cities such as Los Angeles, New York, Washington, D.C. and Atlanta have elected black mayors, and Virginia has elected a black governor. However, since politicians can make few major changes at the local level, most blacks' standard of living have not increased measurably in cities with black leaders. For example, blacks in Atlanta, a city with high economic growth and a black mayor, police chief and school superintendent, did not do much better economically than blacks in many other cities.

According to Gary Orfield and Carole Ashkinaze, who studied black opportunity in the 1980's:

> Local government is not nearly so powerful as state government, or the private sector in affecting broad social, economic, and educational problems . . . In fact, local governments act more as supplicants than as powerful regulators of big business, offering

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[8] This cursory view of the state of black America is by no means meant to be comprehensive. My purpose is to look at statistical trends and to provide background information.

[9] Rainie, Black and White in America: the integration ideal of a generation ago is vanishing as intellectual and social forces pull the races apart. U.S. News and World Report, July 22, 1991.

> subsidies to prevent business departures. What city leaders can do to expand black opportunity is significant but limited . . . The institutions and policies that most directly affect the mobility of young blacks are almost all outside the control of the city leaders. . . Educational funding, welfare policy, higher education, job training, and many other critical issues are decided largely at the state and federal levels, where suburban power is growing and city influence is shrinking as population disperses.[10]

Though the researchers focused on Atlanta, the principles stated above apply to other cities around the country.

Economics

According to the U.S. Census, the median net worth for black families in 1988 was $4,169. The median net worth for white families was ten times that of blacks at $43,279. While 29.1% of Black families had a 0 or negative net worth, only 8.7% of whites did.[11]

The Census Bureau also noted noticeable differences in income for blacks and whites with the same educational levels.[12] A black with less than a high school education could expect to earn $5,533, while a white person could earn $8,766. A black with a high school diploma earns an average of $11,833, while his white colleague earns $15,033. Blacks who have some college education earn little more than a white with a high school diploma- $15,900. However, a

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[10] C. Ashkinaze and G. Orfield. The Closing Door: Conservative Policy and Black Opportunity, University of Chicago Press (1991) p. 24

[11] Population Reference Bureau, Inc. African Americans in the 1990's. Compiled by data issued by the United States Bureau of the Census, 1990 Current Population Reports, Washington, D.C.(1991).

[12] The following statistics are from the same Census Report. The Report organized the data by looking at the median personal income for blacks and whites in the metropolitan north, metropolitan south and nonmetropolitan south. I have used the averages of those three figures for each category, since the numbers were not far apart, for the sake of simplicity.

white with the same level of college earns $19,233. Finally, black college graduates earn an average of $23,333, while white graduates earn $27,200. Thus, though blacks and whites may have equal qualifications, on average, whites earn close to $4,000 more per year. Economists estimate that blacks earn 59 cents for every dollar that whites earn, though well-educated blacks can earn up to 85 cents on the dollar.[13] According to the National Urban League's State of Black America Report, today black families earn 60% of the income of white families, and this figure is down from 65% twenty years ago.[14]

Since there is such a disparity in black-white earning levels, it should not be surprising that there are more blacks in poverty than whites. Nearly 1/3 of blacks live below the poverty level while only 10% of whites do. 45% of black children live in poverty while only 15% of white children suffer the same fate.[15]

Besides the earnings differential, part of the reason that a larger proportion of blacks than whites are poor is that blacks have higher unemployment rates than whites. Even in non-recessionary times, the black unemployment rate is more than twice that of whites.[16] Abraham Moses, a Labor Department Economist states that in December 1991, 12.7% of blacks were unemployed versus 6.3% of whites.[17] The Bureau of Labor Statistics reports that the proportion of black male high school dropouts age 20-24 who had not worked at all during the previous year rose from 15.1%

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[13] Black and White in America, supra at n 10.

[14] Olojede, Blacks in Economic Dumps, New York Newsday, January 22, 1992, p. 17.

[15] Black men still trailing behind, Economist v 314, p. 17(3), March 3, 1990.

[16] A Snapshot of Dade's Black Community, Miami Herald, January 18, 1989

[17] Davis, Urban League: Recession Hits Blacks Harder, USA Today, January 22, 1992, 8A.

in 1974 to 39.7% in 1986.[18]

Significantly, the earnings ratio gap between black and white females "has all but disappeared," according to the National Urban League.[19] Thus, economically, though women in general earn less than men, black women in the work force fare better then black males when examining earnings gaps.

The high unemployment rate causes many blacks to work in the underground economy of drug dealing and other criminal activities. This criminal activity leads to other pathologies which affect the black community.

Blacks and Crime

Blacks constitute only 12% of the population, but 50% of the prison population.[20] Currently one in four black males is under the supervision of the criminal justice system.[21] In many major cities, black males make up more than half of the inmate population. In Illinois, for example, black men make up 14.8% of the population but 62.4% of the prisoners.[22] In fact, the state sends more black men to prison per capita than South Africa does.[23]

Statistically, black males are overrepresented in the prison population, and black people are overrepresented as victims. Nationwide, homicide is the leading cause of death for black males age 15-24, and suicide is the third leading cause of death for the

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[18] Black and White in America, supra at n 9.

[19] Statement made by Dr. Samuel Myers, January 21, 1992, at the National Urban League State of Black America Press Conference. Transcript. Federal Information Systems Corporation.

[20] Black men still trailing behind, Economist v 314 p 17(3), March 3, 1990.

[21] Id.

[22] Odds Stacked against young black males, Chicago Tribune 11/24/91 C1

[23] Id.

same age group.[24] A black man is six times more likely than a white man to be murdered, and a black male age 15-24 has a 1 in 21 chance of being murdered. In Miami, blacks are 1/3 of the robbery victims and 3/4 of the known offenders; 46% of rape victims and more than 50% of the known offenders; and 40% of the murder victims and 44% of the known offenders.[25] Statistics are similar around the country.

The Effect on the Black Family

The high unemployment rate, inequities in pay and rising crime rate have destroyed the black community and the black family. Few black children live with both parents. One survey shows that fewer than 40% of black families with children are headed by a married couple, compared with 80% for whites and 70% for hispanics.[26] Another report states that 50% of all black children live in single parent homes, while only 16% of white children do.[27] For black children, the likelihood of living with both parents until age 17 plummeted from 52% in the 1950's to 6% in the 1980's.[28] Today, the majority of black children in this country are born to unmarried women. 61% of all Black children are born out of wedlock, and in some cities, the number is as high as 80%. [29]

Finally, the current problems promise to get worse. William Julius Wilson, a noted sociologist at the University of Chicago and

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[24] Shahid, We're saying if we don't try something new we're doomed, USA Today, Aug. 15, 1991.

[25] A Snapshot of Dade's Black Community, Miami Herald, January 18, 1989, p. 13A

[26] Self Segregated Schools Seek to Build Self-esteem, Washington Times, March 11, 1991, p. E1.

[27] Black men are still trailing behind, Economist, March 3, 1990. Note that the statistics may differ because a married home and a two parent home are not necessarily the same thing.

[28] Black and White in America, supra at n 9.

[29] Id.

an expert on black families, notes that "marriageable black men" are in "very short supply." He states that for every 100 black women between the age of 25-44, only 63 black men survive to the same age and have a steady job. The rest are unemployed or in prison.[30]

Further, the increased level of drug use among poor black women threatens an entire generation of children. In large cities such as Miami, Los Angeles and New York, 1 in every 5 black american babies is exposed to cocaine in utero.[31] Not only are the schools ill-equipped to deal with today's black children, but unless there are drastic changes, the schools will not be able to do any better with tomorrow's children.

Is Education the Answer?

Though better education will increase the life chances of all people, especially poor people and minorities, education alone will not solve the problem. If blacks and whites with equal levels of education still have a $4,000 earning differential, it is clear that education cannot be the cure for the all of the ills of the black community.

National leadership which proposes concrete solutions to the problems of poverty, joblessness, housing shortages, and discrimination would make more of a lasting and concrete change in African-American communities than changes in the educational structure of the country. Since Lyndon Johnson's War on Poverty initiatives of the 60's, no president has developed a program to deal with the problems of the urban poor.[32] It is unlikely that in recessionary times such as these, with conservative leaders in

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[30] Duke, Conference on Black males offers troubling portrait, Philadelphia Inquirer, May 23, 1991. A 19

[31] A Snapshot of Dade's Black Community, Miami Herald, January 18, 1989.

[32] C. Jencks and P. Peterson. The Urban Underclass. The Brookings Institution, Washington, D.C. (1991).

power, that any new "war" will be waged.

Thus, it seems, parents and school boards must do what is within their power to change what they can. If parents believe that education is the key out of the ghetto and that the current system is failing their children, then those parents and their elected school boards should have the opportunity to exercise their limited power to change their own communities.

But, is the current system really shortchanging black children? Has integration lived up to it's expectations? In Part II, I will look at integration and its effects on black children.

PART II- INTEGRATION AND ITS EDUCATIONAL EFFECTS

INTEGRATION

We would always be supportive of desegregation wherever it can happen. But the truth of the matter is that it is not happening. . . We do not believe that the lives of little black children ought to wait on that phenomenon being achieved.- John Jacob, President of the National Urban League[33]

Most blacks in America do not attend integrated schools. In fact, most blacks attend predominantly minority schools, despite the mandate of Brown. While white flight and the emergence of "segregation academies"- private schools which excluded blacks- did play a role in the failure to completely desegregate the schools, another major factor is that the president, the Congress, the federal courts and local school boards did not embrace Brown wholeheartedly. Since 1954, many school districts have dismantled busing programs,[34] federal courts have refused to force suburban schools to participate in desegregation programs,[35] and the Supreme

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[33] Statement of John Jacob at the National Urban League State of Black America Press Conference, January 21, 1992. Transcript. Federal Information Systems Corporation.

[34] See eg Riddick v. School Board of the City of Norfolk, 784 F.2d 521 (4th Cir. 1986). The Court of Appeals ruled that the school board could legitimately consider white flight as a factor in the plan to discontinue the requirement of busing. The court found that the plan was not motivated by discriminatory intent; the faculty and staff of the school was fully integrated; 3 of the seven members of the school board were black; the superintendent of the school and two of his assistants were black; and the overwhelming majority of the students attended racially mixed schools. The Supreme Court denied certiorari. According to the Boston Globe, Norfolk has become the first American city to experience wholesale resegregation of its public education. Blacks in the city overwhelmingly opposed the plan. See Tye, Wall of Separation Returns to Norfolk, Va ., Boston Globe, January 7, 1992, p. 1.

[35] See Milliken v. Bradley, 418 U.S. 717(1974). In Milliken the Supreme Court rejected a plan which would have required the integration of 250,000 Detroit children with 500,000 mostly white children from the suburbs. Proponents of the plan reasoned that since Detroit was 89% black, it would be impossible to integrate the schools with the city's existing population. The Court held that the scheme would have been punitive to the white suburbs, and

Court has declared that unequal school funding schemes do not violate the Constitution[36].

Many people question the gains of integration and whether black children have truly benefitted educationally from Brown. The following section will discuss the current makeup of American public schools; what kinds of schools the majority of black children attend; the problems of unequal funding; and how black children are doing academically in integrated and segregated settings.

The Makeup of America's Public Schools. Are the Schools Integrated?

The demographic makeup of the nation's students has changed dramatically in 38 years. In 1954, only 10% of public school students were non-white. Now, nearly 1/3 of the students are non-white.[37] Since the mid 1970's the percentage of white students has decreased from 32 to 23% in Philadelphia; from 40% to 19% in Pasadena; from 85% to 55% in St. Paul, Minnesota; and from 40% to 13% in Los Angeles.[38] Currently, New York city schools are 38% black, 34% Hispanic, 20% white and 8% Asian. Detroit schools are 90% black and Milwaukee's are 60%. Only 20.7% of Boston's public school children are white.[39]

However, housing patterns and the city's commitment to busing dictate the makeup of the individual schools. Today, 30% of blacks live in almost complete racial isolation. This is only a 4%

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that since no official acts by the suburban school districts had caused the discriminatory conditions in the Detroit schools, it would be unfair to take away the suburbs' local choice and autonomy.

[36] See San Antonio Independent School District v. Rodriguez, 441 U.S. 1 (1973).

[37] U.S. Sounds Retreat in School Integration, Boston Globe January 5, 1992, p.1

[38] Id.

[39] U.S. Sounds Retreat in School Integration, supra at note 37.

improvement from 10 years ago.[40] As previously mentioned, courts have not required suburban-urban integration as a remedy for desegregated schools. Most urban communities have experienced both white flight and "middle-class black" flight. Thus, since students for the most part attend schools in their own districts, poor, black children who live in housing projects attend schools with other poor black children, and not with white or middle class black children.

Gary Orfield, the nation's foremost expert on desegregation, recently released the National School Board's Association Report, which proves that the federal government and the district courts have not achieved the integration goals of Brown. In fact, the Report concluded, "in the 1990's large scale resegregation could be the order of the day in much of the country," with the worst conditions in northern cities.[41]

According to the Report, today, 50% of black students in the northeast attend schools with fewer than 1% whites, and 1/3 go to school that are more than 99% minority.[42] Other sources report that resegregation is a problem in other parts of the country as well. For example, in 1986, 69% of black students in Dade County- which includes Miami- attended relatively segregated schools. In just one year, the number rose to 72%.[43]

Nationally, however, according to the School Board Report, resegregation has not been as severe. According to Orfield, in 1968, 76.6% of blacks went to "predominantly minority" schools.[44] Since 1972, 63% have gone to "predominantly minority" schools. In

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[40] Black and white in America, supra at n 9.

[41] U.S. Sounds Retreat, supra at n 37.

[42] Id.

[43] A Snapshot of Dade's Black Community, Miami Herald, January 18, 1989.

[44] "Predominantly minority" means more than 1/2 minority. Personal communication with Gary Orfield, March 14, 1992.

1968, 64% of blacks attended "intensely segregated" schools (90% black). By 1972, the percentage had dropped to 39%, and by 1980, 33%.[45] However, Orfield's evidence does show that the majority of black students still go to "predominantly minority" schools (63%). Thus, though Brown mandated integrated schools, only 37% of blacks today currently attend such schools. Further, 56% of black students attend "urban" schools.[46]

What Kinds of Schools Do Most Black Children Attend? School Funding

In 1973, The Supreme Court declared that there is no fundamental right or interest recognized explicitly or implicitly in the Constitution in receiving an education. San Antonio Independent School District et al v. Rodriguez, 441 U.S. 1 (1973). Therefore, the Court reasoned, school funding schemes based on property taxes did not offend the Constitution, even if that meant that poor students would receive different educations than rich students in public schools, because the state had a legitimate interest in permitting community control of the schools.

Since school funding depends on the district's property tax base, and blacks are statistically likely to live in poverty and pay little if any property taxes (since most do not own homes), black children are more likely than white children to receive underfunded, substandard schools and teachers. Further, middle-class blacks, who would be able to provide tax revenue and possibly revamp the schools, tend to leave the urban communities, and thus the poor blacks, who have neither political nor economic power, are unable to fight for better school resources.

Author Jonathan Kozol has studied the disparities in school funding and facilities in black and white schools around the country. In Savage Inequalities: Children in America's Schools, he compares poor schools in East St. Louis, New York, San Antonio,

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[45] U.S. Sounds Retreat, supra at n 37.

[46] Cooper, Assessing Black students in the 80's, Washington Post, April 8, 1990.

Chicago, Washington, D.C. and Camden with neighboring suburban schools. Kozol concluded that unequal school funding and resources leads to dramatically different qualities of education. In Chicago, for example, Kozol noted:

> In the suburbs, says the Chicago Sun Times, it is not uncommon for the ratio between students and counselors to be 250 to 1 . . In the city the ratio is 400 to 1. While a suburban school library is likely to have 60,000 volumes, a Chicago school library is lucky to have 13,000 volumes. . . Over the course of 13 years, from kindergarten to twelfth grade, $38,00 would be spent on [a poor child's] education, and over $100,000 on the [suburban] child's education.[47]

The makeup of the school leadership appears to have little to do with the quality of education. Kozol studied Detroit's resources and wrote:

> The city of Detroit has had a black administration for close to two decades. But the city is poor and mainly black, and is so poorly funded that three classes have to share a single set of books in elementary schools. 'It is not until the sixth grade,' the Detroit Free Press reports, 'that every student has a book.' At MacKenzie High School in Detroit, courses in word processing are taught without word processors.. . Of an entering ninth grade class of 20,000, only 7,000 graduate from high school, and of these, only 500 have the preparation to go on to college.[48]

Not only do students in poor districts receive substandard resources, but they are also robbed of the better teachers. New York Newsday studied educational funding in Long Island, New York. The reporters found that:

> Predominantly black districts, in some cases, are unattractive to teachers because they offer dramatically lower teaching salaries than white districts. As a result teacher turnover is high and some black districts are

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[47] Id. at p. 73-77.

[48] Id. at 198.

> left to rely heavily on provisional teachers- teachers who lack full teaching credentials. . . Teachers in largely white Island Trees, for example, earned a median salary of 42,270 compared with 33,658 in Wyandanch [largely black]. In Island Trees, the median teacher's experience is 22 years. In Wyandanch, 11. [49]

Additionally, poor school districts must spend more money on special education, social services, medical care, and counseling. Thus, even equal funding would not be adequate to equalize educational opportunities between poor and rich school districts. In Wyandanch, NY, for example, the school district spends nearly as much on the special education program as on the regular instruction program.[50]

Jonathan Kozol summarized the school funding dilemma by observing:

> There is a certain grim aesthetic in the almost perfect upward scaling of expenditures from poorest of the poor to richest of the rich in New York: $5,590 for the children of the Bronx and Harlem, $6340 for the non-white kids of Roosevelt, $6400 for the black kids of Mt. Vernon, $7400 for the slightly better off community of Yonkers, over $11,000 for the very lucky children of Manhasset, Jericho and Great Neck. In an ethical society, where money was apportioned in accord with need, the scalings would run almost in precise reverse.[51]

The school funding fight has accelerated, in part because more people are recognizing the inequities which occur when the quality of education in public school depends on the parents' income. However, the real strides have been in the state and not the federal courts.

In Texas, for example, lawmakers have tried three times since 1989 to shift some property taxes from richer districts to poorer districts. Three times the state Supreme Court has ruled the statewide funding scheme unconstitutional, however, it has recently

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[49] Fresco, A World Apart. Segregation on Long Island. Education Funding, New York Newsday, September 9, 1990, p.7

[50] Id.

[51] Kozol at 122-123.

allowed the state to alter the proposal and present it to the voters.[52] In Virginia, poor and rural districts have sued the state over the funding inequity.[53] The case has not yet been resolved. Kentucky, Montana, New Jersey and nine other states have held that their state's school funding schemes are unconstitutional but have left it to the legislatures to remedy the situation.[54]

Is Increased School Funding the Answer?

Kozol and others involved in the battle over school funding realize that funding will not eradicate the problems in the black community overnight. Rather, they argue, with equal educations, black children will have the opportunities to compete, which they do not have now. Further, says Kozol, since each state requires each child to attend school, and the state determines what kind of resources each child shall have, it is the state's responsibility to ensure that each child has an equal education.

However, equalized funding won't come close to solving the problem. First, as previously noted, schools in poorer neighborhoods will have to spend much more than other schools because the children have more severe problems than other children. Schools which are already "rich" will not have to spend all of their resources on in school day care to keep pregnant teens in school, social workers to deal with gang violence or special education classes which have twice as many students as the gifted classes.

Second, affording each school the funding it needed would necessarily divert resources from other schools. In the context of

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[52] Texas School Tax Flunks, Washington Post, January 31,1992, p. A4.

[53] Schools and Fairness in Virginia, Washington Post, September 26, 1991.

[54] New Jersey Defines School Equity, Washington Post, June 15, 1990.

the all-male academies, for example, if the academies needed more funding than coeducational, non-Afrocentric schools, would it be fair to take funding from other schools, which chose to remain in the traditional, coeducational mode rather than to convert to an untried experiment? It is probable, based on the Detroit School Board's own estimates, that all-male academies would have received more money than other schools.[55] Thus, the three academies could have diverted funds from the other schools which also needed extra money.

Moreover, one could argue that a school which has the same goals of concentrating on at-risk boys, but which uses more traditional and less controversial methods might receive less money, though it could easily spend the same amount itself. A school board or agency which has the discretion to allocate resources could funnel money to its pet projects, such as the all-male academies, while allowing more traditional schools which may want to try less extreme methods to founder, thus fulfilling the prophecy of failure.

But, it is unlikely that these fights over money will occur, because most states will not abandon the property tax scheme of school funding. Therefore, though we must keep the aforementioned considerations in mind, we should allow parents and school boards to try innovations in teaching and curricula which do not cost prohibitively more than the traditional programs, which do not work for black children.

Those who accuse the proponents of separate schools of "giving up" on integration cite statistics to prove the benefits of integration. Thus, we must look to see how blacks have done academically since the Brown decision.

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[55] Detroit Board of Education, Male Academy Grades K-8. A Demonstration Program for At Risk Males (DRAFT), December 7, 1990.

How have black students done educationally since integration?

Most educators believe that both blacks and whites have benefitted from integrated schools. Robert Crain of Columbia University, who has studied desegregation for 25 years, and has completed one of the most comprehensive studies on its effects on black students, notes that nearly 1/3 of the gap between the standardized test scores of blacks and whites was eliminated during the 1970's. The progress was greatest in the South, where desegregation began and proceeded the furthest. [56]

Crain also found, through his 15 year study, that black students who go to integrated suburban high schools rather than segregated ones are less likely to drop out of school, get in trouble with the police, bear a child before age 18 and drop out of college. These same blacks are more likely to have white friends and live in integrated neighborhoods.[57] He also learned that black students who attended desegregated school beginning in kindergarten or the first grade performed 30 points higher on achievement tests than blacks students in segregated schools. However, if desegregation did not begin by the 1st grade, he believed that the benefit would be much weaker.[58] Further, Professor Crain and Rita Mahad stated that integration has produced a gain of 4 I.Q. points among blacks.[59]

Researchers at Johns Hopkins corroborate Crain's data and state that blacks who went to integrated elementary and high schools with whites are more likely to attend white majority colleges, get jobs in higher paying, desegregated workplaces, and have white friends as adults.[60]

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[56] U.S. sounds retreat, supra at n 37.

[57] U.S. sounds retreat, and Personal Communication.

[58] Personal Communication.

[59] Traub, Separate and Equal, Atlantic v 268 24(8), September 1991.

[60] US sounds retreat, supra at n 37.

However, despite Dr. Crain's belief that integration has benefitted black students, he does acknowledge that he does not know what it is about integrated schools that provides the benefit. For example, he says, the benefit could be due to increased teacher resources, a higher stress on science in integrated schools vs. segregated schools, or other educational changes.[61] Further, he states, there is merit to the arguments cited by the proponents of all-male, all-Black schools that tracking and the impossibility of desegregating cities in which the majority of people are black mandate a different solution. In fact, he says, he is in favor of any new proposal that could work, as long as the academies wouldn't be used to the exclusion of other ideas.[62]

However, though Dr. Crain and most other experts agree that desegregation has helped blacks academically, not all desegregation experts agree. Dr. Christine Rossell, from Boston University has desegregated six school systems around the country, but is skeptical of the merits of such plans. She questions whether desegregation itself has led to increases in achievement or whether broader educational changes in general have actually caused test scores to rise.[63] While she does acknowledge that there have been "small gains in achievement", she states that Dr. Crain himself cannot explain why desegregation has led to the gains. Further, she notes, though the gaps are narrowing, the income differential has remained constant. However, almost every expert agrees that there have been some changes in black achievement- there is simply a debate as to the cause of the change and the degree.

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[61] Personal Communication.

[62] Id.

[63] Personal Communication with Dr. Rossell on January 29, 1992. See Transcript of Interview in Appendix.

SAT Scores and Other "Objective" Measures of Achievement

In 1990, black children, who comprised 10% of the test-takers, scored almost 200 points lower than whites in their combined math and verbal SATs, though black scores are rising and white scores are falling.[64] Of the 94,000 blacks who took the test in 1990, only 1% scored above 600 on the verbal portion (considered high) and 3% scored above a 600 on math. The corresponding figures for white students were 8% and 19% respectively.[65] Many educators attribute the increase in scores among black students to increased access to integrated schools, where the high school graduation rate can come close to the national average of 75%.[66]

Many believe that test scores are not the best indicators of academic ability. However, black students do not achieve on the same levels as whites when looking at grades or grade level performance. According to the Efficacy Institute, fewer than 1% of black students earn A's, while 11% of non-blacks do. Only 10-15% of blacks earn B's, versus 25-25% of non-blacks. 15-20% of blacks receive F's while only 5% of non-blacks fail.[67] Finally, according to the National Assessment of Educational Progress Study, the average black and hispanic 12th grader reads at roughly the same level as the average 8th grade white student, and the average 12th grade black student writes only slightly better than the average 4th grade white student.[68]

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[64] Traub, Separate and Equal, Atlantic. September 1991.

[65] Id.

[66] Assessing Black Students in the 80s, Washington Post, April 8, 1990.

[67] Coons, Working on Goals and putting time and effort into them is everything. Black students in Newton work to raise grades, Boston Globe, June 11, 1989.

[68] Toch, Giving kids a leg up: educators are debating how best to help deprived kids succeed in school, U.S. News and World Report, October 22, 1990, v 109 p. 63. Prince George Public Schools, Black Male Achievement: From Peril to Promise: Report of the Superintendent's Advisory Committee on Black Male Achievement.

The evidence on the benefits of attending integrated classes appears to be mixed. Though there may be long term societal gains-- increased race relations, better chance at living and working in integrated environments-- black students still have a long way to go to catch up to white students. Further, even those students in integrated schools may not be in integrated classes. The phenomenon of tracking children by ability level, some say, has already led to separate classes for blacks and more particularly, black males. The high incidence of tracking and its pernicious effects is one of the main reasons cited by proponents of the separate schools.

Tracking: Are blacks in Integrated Schools in Integrated Classes?

UCLA professor of education, and one of the nation's foremost experts on tracking, Jeannie Oakes, studied tracking at 1200 public and private schools nationwide.[69] She found that in secondary schools, fewer than 10% of the largely minority classrooms were on a "fast" track compared with more than 50% of the classes where white students were the majority.[70] At integrated elementary schools, math and science classes with a majority of minority students were 7 times more likely to be tracked low ability than high ability.[71] On the other hand, classes with mostly white students were evenly split between low and high tracks.

Further, Professor Oakes learned that the best teachers and equipment were reserved for high skill classes.[72] This means that black students who would have benefitted from better teachers were denied the opportunity and were instead given lesser trained teachers. Teachers used tracking in 65% of math and science classes

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[69] Jeannie Oakes, Keeping Track: How Schools Structure Inequality. (New Haven: Yale University Press 1985)

[70] Tye, Tracking Can Undo What Integration Builds, Boston Globe, January 6, 1992 and Id.

[71] Id.

[72] Id.

in primary schools and in 80% of secondary schools. Oakes concluded that though "poorer preparation at home and in early school is partly responsible for hispanics and blacks ending up in low skill classes," blatant racism also plays a role. "Asian students often end up in higher tracks because of a stereotypical judgment that they must be smarter."[73]

Another study in Chicago found that statewide, black boys are three times more likely than white boys to be labelled mildly retarded and to never attend a regular class.[74] As many as 1/3 of black boys are mislabelled and put in slower classes.[75]

Many studies show that there is overwhelming evidence that teacher expectations are based in large part on stereotypes. A study of teacher's students in Boston's Lesley College found that teachers provided positive reinforcement based on their preconceived ideas about the student's intelligence. Often this idea correlated with their race. [76] Educators have testified to Congress about the problem as well.[77] Dr. Bruce Hare, educational

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[73] Id.

[74] Odds Stacked Against Black males, Chicago Tribune, November 24, 1991, C1

[75] Id.

[76] The teachers were told to teach a math concept to students who had equal average IQs. The teacher, however, thought that the half the students were average and half had superior IQs. The "superior" white students were given 2 positive reinforcements for every one negative. Average white students received one positive reinforcement for each negative. Average black children got one positive reinforcement for every 1.5 negatives. Finally, "superior" black children got one positive reinforcement for every 3.5 negatives. The researchers concluded that the teachers' stereotyped mindsets could not equate high intelligence with being black.

[77] Dr. Antoine Garibaldi, Dean at Xavier University in New Orleans told a House Committee: "When we asked teachers if they believed that their black male students would go to college, almost six out of every ten indicated that they did not believe that this would occur. What made this response more troubling is that 60% of our random sample of 318 teachers taught in elementary schools, 70% had 10 or more years experience, and 65% were black! Obviously,

psychologist and professor at SUNY Stonybrook has studied teacher expectations and found that "teachers and principals are likely to bring stereotypes of black boys to work with them . . . this negative treatment of children tends to become a self-fulfilling prophecy."[78] Dr. Denise Alston, senior education associate of the Children's Defense Fund, agrees with Dr. Hare's assessment, and attributes low teacher expectations to "the racism of our culture" and a judgment "based on skin color."[79] The reason that teacher expectations are so important is that, according to education professor Fred Erikson, "one of the most powerful influences on a black child is the beliefs of his teachers about his academic potential."[80]

Thus, though some black students achieve small gains in integrated settings-- though not near the levels of whites-- black students in these schools are more likely than not to be tracked in a low class, deprived of good equipment and teachers, and suffer low esteem. James McPartland, coordinator for the Center for Social Organization of Schools at Johns Hopkins University warns, "tracking reinforces the stereotypes that Black kids are dumb, which negates the benefits of integration even further."[81]

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teachers' racial ethnic or cultural affiliations do not make them immune from holding negative self-fulling prophecies about the children whom they teach." Barriers and Opportunities for America's Young Black Men," at 51. Hearing before the House Select Committee on Children, Youth and Families. 101st Congress, 1st Cong. 1st Sess. (1989).

[78] Dent, Readin', ritin' and rage: How schools are destroying black boys, Essence v 20 p. 54 November 1989.

[79] Id.

[80] Coleman, Blacks, IQ, and the American caste system. A Challenge to Old Theories of Race and Intelligence, San Francisco Chronicle May 2, 1988.

[81] Id.

Is Integration the Answer?

Many believe that integration has done more to hurt blacks than to help blacks. For example, Basir Mchawi, founder of the Ujaama school scheduled to open in New York in September, says that blacks are worse off now economically, educationally and socially than they were 25 years ago because communities have broken down and black teachers who once ran the schools in the communities no longer have such a prominent role.[82] Other people such as Spencer Holland argue that blacks are already in separate schools through the high incidence of tracking of African American boys into remedial and special education classes.[83]

As we have seen in the tracking section, statistics support Mr. Holland's claims. Though opponents of all-male academies argue that separating the children will stigmatize them and rob them of the benefits of integration, it appears that tracking does both of those things and more. Further, low teacher expectations damages the black children and makes them unwilling and possibly unable to learn.

But, does that mean that black boys should have their own separate schools? Professor Orfield argues that while integration may not be perfect due to tracking and other problems, black students who go on to integrated colleges still do better if they went to integrated high schools than if they attended all-black schools.[84] He states that teachers and principals in many all-black schools set lower standards and have lower expectations, thus providing a false sense of security for the children and setting them up to fail once they enter the real world.[85] Since they have not had to compete with whites in high school, he contends, they will be unable to compete with them in college or in the job

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[82] Personal Communication on January 27, 1992.

[83] Personal Communication on February 6, 1992.

[84] Personal Communication with Mr. Orfield, March 14, 1992

[85] Id.

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Though on their face, Orfield's arguments may sound elitist or racist, they are true. However, all-male academies do not have to set the same traps that traditional all-black schools do. By using the same rigorous standards, high quality teachers, and positive reinforcement that teachers in integrated schools reserve for white children, the teachers in the academies could achieve the same objectives.

Furthermore, there is no evidence that merely sitting next to a white child produces a smarter black child. Tracking aside, black children in integrated schools still aren't competing on the same level as white students. As we have seen, teacher expectations play a critical role in a child's ability to learn. Therefore, a child who attends a school, such as the academies, where the teachers urge him to learn and set strict standards to challenge him may very well be able to compete on the same level as whites.

Thus, just because black children leaving traditional all-black schools have not been able to compete with white children does not mean that the "blackness" of the schools is at fault. Rather, the curriculum, teaching staff and inadequate resources contribute to the poor education, and it is possible that the academies or immersion schools would be able to change those things within the existing all-black school environment. Orfield himself acknowledges that integrated schools have far better teaching and educational resources than all-black schools.

While Orfield's statements are not racist, the idea that black children can only succeed if taught around whites is racist, and proponents of the academies should have the opportunity to prove that integration is not the only answer.

On the other hand, the existence of academies which would have caring teachers and diverse curricula should not be an excuse to allow teachers in integrated schools to continue tracking and stereotyped judgments about African-American children. Therefore, school boards nationwide should implement widespread change in teacher attitudes and allocation of resources in all schools to

ensure that children who cannot attend immersion schools or academies will not be disadvantaged by the traditional system.

Black male versus black female achievement

Most opponents of all-male schools argue that black females need special help as well. Black females are more likely than white females to get pregnant while a teenager, drop out of school, remain single, and live in poverty.[86] However, the proponents of the schools argue, black females still achieve more highly than black males.

Black females achieve more than black males early in their academic careers. In Chicago for example, by third grade, black boys trail all other groups in math. In every other ethnic group, boys significantly outscored girls, but black boys and black girls had the same test results.[87] In addition, black males outnumber black females almost two to one in special education and learning disability classes.[88] Many believe that the overenrollment of black males in these classes is due to "the problems males encounter adapting to a school culture which is prescribed by a predominantly white and female teaching force." [89] Further, by the age of 13, 44% of black males are one or more years below grade level compared to 33% of black females, 30% of white males, and 22% of white females.[90]

Statistics are also disheartening in higher education. In

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[86] See Section on the state of the black family for poverty rates.

[87] Odds Stacked Against Young Black Males, Chicago Tribune, November 24, 1991, C1.

[88] Black Male Achievement Task Force Report- Prince George County Public Schools- Author

[89] Id.

[90] Prince George County Public Schools, Black Male Achievement: From Peril to Promise: Report of the Superintendent;s Advisory Committee on Black Male Achievement.

1960, 281,000 blacks held college degrees. Now, the number is over two million.[91] However, 3/5 of blacks in college today are women.[92] In the last six years, the number of black men in medical school declined by 12% while the number of women rose by almost 33%.[93] Currently, 70% of blacks entering law school are women, and 60% of blacks in business school are women. [94] Black men are only 3 1/2 % of America's college students.[95] Nationwide, 40% of black men are functionally illiterate.[96]

Though black females outshine black males educationally, more importantly, according to proponents of the all-male schools, black males are killing themselves and each other far more than black females. As previously mentioned, homicide is the leading cause of death for black males between the ages of 15-30, and suicide is the third leading cause of death. In the 15-24 age group, black males kill themselves four times as often as black females kill themselves.[97] In fact, the suicide rate for black males tripled in 25 years.[98] As the section on crime detailed, black men are more likely to get arrested than black women. By the age of 19, one out of every six black males will have been arrested.[99]

Chicago researchers have painted a startling portrait of black

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[91] Black and White in America, supra at n 9.

[92] Randolph, What we can do about the most explosive problem in black America- the widening gap between women who are making it and men who aren't, Ebony v 45, p. 52 August 1990.

[93] Id.

[94] Id.

[95] Black men still trailing behind, supra at n. 20.

[96] Duke, Conference on black men offers troubling portrait, Philadelphia Inquirer, May 23, 1991.

[97] Black Male Achievement Report.

[98] Id.

[99] Id.

males which summarizes their plight. The researchers found that of every 1000 black boys born next year, only 423 will survive childhood, graduate from high school, stay out of jail and become a functioning member of society.[100] The corresponding number for white male babies is 764.

Is Separating Boys From Girls the Answer?

The evidence in the previous section shows that even in coeducational settings, black girls do better than black boys. But, evidence also shows that boys and girls perform better when separated. As early as 1969, researchers have attempted to use single sex classes to help disadvantaged black students. In early studies, students in single sex classes scored significantly higher in reading than those in control groups.[101] Researchers found that students in all-male classes were more positive toward school, learning, teachers, peers and self than other groups. However, the control group was more positive in these areas than the all-girl groups.[102]

The modern evidence on sex segregated education shows that girls actually perform better than boys in sex segregated environments.[103] Dr. Cornelius Riordan has completed the most thorough study of minority achievement in single sex environments. By studying data of Catholic schools with an average of 60%

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[100] Odds stacked against young black males, supra at n 22.

[101] Scheiner, A Pilot Study to Assess the Academic Progress of Disadvantaged First Graders Assigned to Class by Sex and Taught by a Teacher of the Same Sex., School District of Philadelphia, Pa., November 1969.

[102] Id.

[103] See text of Cornelius Riordan interview in Appendix. Note that NOW also cites evidence which points to the efficacy of sex segregated education in it's position paper on the all-male academies, Public Education Programs for African American Males: A Women's Educational Equity Policy Perspective, Working Draft. NOW Legal Defense and Education Fund, July 1991.

minority students, he found that both boys and girls achieved more highly when in a single sex environment. In fact, girls actually did better than boys did when separated by sex. His research is especially significant because there are so few studies which measure minority achievement in a single sex environment.[104]

Patricia Bauch, another noted gender separation researcher found that though "Catholic education has distinct approaches toward the education of girls and boys, when these approaches are 'blended' in a coed school, the distinctiveness is lost." Thus, Bauch concluded, "achievement advantages found in Catholic schools can be attributed to single-sex Catholic schools, not to Catholic schools generally."[105] (emphasis added). Further, her research found that "students in single-sex schools display more positive academic interests, attitudes, and behaviors than students in coed schools." [106] Finally, researchers Valerie Lee and Anthony Bryk have compared the effects of single sex and coeducational secondary eductaion and found that single sex schools delivered specific advantages to students, especially female students.[107]

However, despite the empirical evidence about the efficacy of the schools, many disagree with gender separation. One argument

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[104] For example, a computerized search of the ERIC (educational) database using the terms "single-sex" and "school" revealed 144 articles. The vast majority of the relevant articles on academic achievement (those not dealing with budgetary, financial or higher education) came from the international academia, most notably Australia. Though I believe that any research is helpful, one cannot ignore the fact that the demographics and social conditions in America's urban centers differ dramatically from those anywhere else in the world. Thus, evidence on achievement or lack thereof in Nigeria, Canada or New Zealand may not be particularly helpful when examining the efficacy of such programs in Detroit or Milwaukee.

[105] Bauch, Paper presented at the Annual Meeting of the National Catholic Educational Association, Chicago, March 1989.

[106] Id.

[107] Lee and Bryk, Effects of Single-Sex Secondary Schools on Student Achievement and Attitudes, Journal of Educational Psychology, v. 78 n 5, p. 381-395, October 1986.

against the schools is that teachers in all-male schools will have the opportunity to indoctrinate the boys with sexist ideas. Though this argument may have some merit, there is no reason to assume that the teachers would not teach the boys the value of respecting women. There is no evidence that simply being in a separate environment will breed misogynistic tendencies. A balanced curriculum will ensure that women receive the respect that they deserve.

Many who oppose the schools, in both the black and the white community, also assert angrily that the black girls are being sacrificed to "save" the black male. By allowing special schools for the boys, the argument goes, the school boards are ignoring the special needs of the girls. This is perhaps the most powerful argument that the opponents of the academies cite.

Unfortunately, the proponents of the schools have not accorded it enough respect. The most common response to the argument is that girls already have special schools for pregnant teens, for example. However, this ignores the fact that those schools only deal with the problem <u>after</u> it has occurred and thus one cannot analogize the pregnant teen schools to all-male academies which seek to stop the problems before they happen. More importantly, though black girls do better than black boys, they still do not do as well as white children either.

Thus, those who argue that girls should have special schools too make a good point. Though Milwaukee never planned to open an all-female school due to lack of funds, Detroit did have such plans. Thus, had the Detroit court allowed the academies, girls could have had an equal opportunity to study in an environment designed to cater to their needs. Since the judge ruled that all-male schools were unconstitutional and violated federal laws against gender discrimination in education, neither the boys nor the girls can have same sex schools.

However, as the next two sections will show, as valuable as they might be, single sex schools for both sexes may not be a viable <u>legal</u> option. Many object to the separate but equal idea as

a violation of Brown and subsequent Supreme Court cases dealing with gender discrimination.

Conclusion

In sum, then the educational system has failed black children, and especially black males. School funding, improper resources, miseducated teachers, and tracking all play a part in the problem. Though black females are not doing as well as white students either, the evidence shows that whether in segregated or integrated schools, black males fall far behind all other groups, including black females, in academic achievement. The statistical evidence from Part I shows the result of that underachievement.

However despite the statistical evidence, many people believe that the only way that a black child will have access to adequate resources is through attendance at an integrated school.[108] But since the courts have shown less willingness to achieve integration, and over 60% of black children attend predominantly minority schools, neither equalized funding nor true integration appear to be attainable goals. In fact, on March 31, 1992, the Supreme Court made its most important statement on integration since 1954. Through a unanimous 8-0 vote, the Court held in Freeman v. Pitts, ____ U.S. ____ (1992) that "federal courts have the authority to relinquish supervision and control of school districts in incremental stages before full compliance has been achieved in every area of school operations."[109] Further, Justice Kennedy stated, "racial balance is not to be achieved for its own sake . . . Once the racial imbalance due to the de jure violation has been remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors."[110] Thus, the Supreme Court

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[108] Personal Communication with Gary Orfield, March 14.

[109] Excerpts from Court Ruling to Lift Curbs on Formerly Segregated Schools, New York Times, April 1, 1992, B8.

[110] Id.

which has battled school boards which hope to escape judicial supervision for years, has now eased the burden of desegregating the schools for both the school districts and the federal courts, though it failed to set the concrete standards for supervision which both sides had wanted.

With the fate of desegregation uncertain and the current research showing proven success of single sex schools in minority communities, all-black, all-male academies may be a viable alternative to the current method of educating black children.

Afrocentric Education

You can't go to school in America, K to 12, whether you are white, black or whatever, and come out on the other side of the experience without having a negative attitude about Africans and African-American people . . . You go through that system and you come out, if you are not anti-African, if you don't hate yourself, then you probably failed the course . . . That African child sits there forever, always on the outside, knowing that unless he answers on a quiz that Thomas Jefferson and George Washington, two slave owners, were great men, he will be failed.- Molefi Asante, author of Afrocentricity and The Afrocentric Idea [111]

Supporters say that the change is necessary to increase black student's achievement and to raise the self esteem of black children. These are laudable goals, but they are based on the naive assumption that fewer black girls will get pregnant and fewer black boys will drop out of school if they are taught that they are descended from the builders of the pyramids.- David Nicholas [112]

Other than the all-male academies, no other recent proposal to revamp urban education has caused more controversy than Afrocentric education. Both the Milwaukee and the Detroit plans had planned to have all-male schools with an Afrocentric curriculum. Though they are now both coed, the Afrocentric curriculum remains. Similarly, the Ujaama institute in New York, which will address the needs of at-risk black and Hispanic children, will also have an Afrocentric focus. Therefore, before looking at the Detroit and Milwaukee plans, we must first look at Afrocentrism.

According to Molefi Asante, the most noted proponent of Afrocentricity and the director of the nation's only doctoral program in African-American studies:

> Afrocentricity . . . consists of interpretation and analysis from the perspective of African people as subjects rather than objects on the fringes of the European experience . . . The task of the Afrocentric curriculum is finding patterns in African-American history and culture that helps the teacher place the child in the middle of the intellectual experience.

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[111] Innerst, Putting Africa on the Map "Racist" History Assailed, Washington Times, Nov. 13, 1990, A1.

[112] Nicholas, Afrocentrisism and the Tribalization of America, the Misguided Logic of Ethnic Education Schemes, Washington Post, Sept. 23, 1990, B1.

> This is not an idea to replace all things European, but to expand the dialogue to include African-American information . . . Afrocentricity believes that in order to have a stable society, we must always have a society that respects differences.[113]

Some of the central tenets of Afrocentric education are that Africa is the cradle of civilization and the birthplace of early man; that Egypt was a black civilization, and "white supremacists" attempt to hide that fact; and that Greeks and Romans traveled to Egypt to learn law, math, science, medicine and other subjects from the Egyptians and then carried the knowledge back to Europe.[114]

Many scholars-- both black and white-- debate the truth of those statements, though most acknowledge that the current curriculum must include more about black history than it does. However, besides the disputed factual claims, Afrocentrism has caused such vitriolic reaction in part because of Afrocentrists such as Dr. Leonard Jeffries of City College, who has reportedly argued that "ice people"-- Europeans who lack melanin-- have brought the world "domination, destruction and death."[115] Asante has stated that he disagrees with some of Jeffries' statements.

Discussing the misconceptions about "ethnic cheerleading" and a "separatist philosophy" Asante states that "to replace Eurocentric with Afrocentric is simply committing another crime, replacing one orthodoxy with another orthodoxy."[116] However despite Asante's remarks, critics such as Arthur Schlessinger Jr., author of The Disuniting of America: Reflections on a Multicultural

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[113] Asante, Putting Africa at the Center, Newsweek, Sept. 23, 1991, p.46.

[114] Horner, Out of Africa. Molefi Asante, Temple's Afrocentric Crusader, Says Blacks are Crazy Because They've Become Imitation Whites., Philadelphia Inquirer, Jan. 19, 1992, Magazine, p.12.

[115] Innerst, Putting Africa on the Map, "Racist" History Assailed, Washington Times, November 13, 1990, A1.

[116] Marriott, Afrocentricity Sparks Debate in the U.S. Schools, Oregonian, Aug. 14, 1991.

Society and Diane Ravitch, Bush's undersecretary of education argue that while traditional historical interpretation ignores the achievements of black people, much of the Afrocentric information is "based on false scholarship" and is "anti-white."[117]

The reason that the debate has received such national attention and has gone beyond the academic circles is that school districts around the country are adopting Afrocentric curricula. In fact, Asante has acted as consultant for school boards in Camden, N.J., Baltimore, Washington and Detroit.[118] In Oregon, the Portland school system has devised Baseline Essays which would enable all students to learn about the histories of peoples from six geocultural regions. Written by black Afrocentrists such as Asa Hilliard, the African-American essays have been maligned by historians around the country and teachers in Portland as being biased and untrue.[119] Even Asante has criticized the lack of balance in the Portland curriculum. [120] Many teachers do not even use the curriculum on a regular basis.

However, more than 20 school districts including New Orleans, Indianapolis, Milwaukee, Seattle[121] and New York, have begun teaching or are currently implementing an Afrocentric curriculum in select classes.[122] Many have had positive preliminary results. In East Palo Alto, California, for example, graduates of the Shule Mandela Academy, who pledge each morning to "think black, act

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[117] Collins, Afrocentrism's Popularity on Rise as a Way to Lift Up Urban Schools, Philadelphia Inquirer, Mar. 4, 1991, A1

[118] Horner, Out of Africa. Molefi Asante, Philadelphia Inquirer, Jan. 19, 1992.

[119] Uris, Fighting Words, Oregonian, March 8, 1992, B07

[120] McVea, Scholar Says Black Youngsters Deserve Afrocentrist Curriculum, Oregonian, Feb. 15, 1992, B3.

[121] Seattle is planning to open an African American Academy in September 1992 for 200 elementary school children. Id.

[122] Collins, Afrocentrism's Popularity on Rise as a Way to Lift Up Urban Schools, Philadelphia Inquirer, March 4, 1991, A1.

black, speak black, buy black, pray black, love black and live black" are the only blacks in the local high school's advanced placement classes.[123]

In Camden, the Hatch Middle School's Asante Cultural Awareness Academy has 1/3 of the 75% black student body participating in Afrocentric education. Though the curriculum has been modified to include the achievements of Puerto Ricans to accommodate the 25% Hispanic student population, the majority of the subjects used to teach traditional classes are African and African American.[124] Students read biographies of Winnie Mandela and Cesar Chavez in English, study the census results and black population shifts to learn percentages in math, and decorate the bulletin boards with posters of African kings and rap stars.[125]

Though the program has only operated for one year, thus making it too early to have gathered conclusive data, the school's most recent test scores show that 84% of the sixth graders in Afrocentric and regular classes are performing at the national average in math versus 73% last year.[126] The gains in language arts have been higher-- 82% are achieving at the national average versus 68% last year.[127]

Private schools have also used Afrocentrism with marked success. There are approximately 350 Afrocentric academies

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[123] Kantrowitz, A is for Ashanti, B is for Black, Newsweek, Sept. 23, 1991, p. 45.

[124] Barrientos, In Camden, Afrocentrism is Bringing Academic Gains, Philadelphia Inquirer, March 4, 1991, B1.

[125] Id.

[126] Id.

[127] Id. The teachers believe that the test scores are directly related to the infusion of Afrocentrism into the curriculum, however, the articles do not explain the difference in test scores for those not in Afrocentric classes, nor do they provide a breakdown of test scores for those in Afrocentric classes and those in traditional classes.

educating 50,000 children nationwide.[128] The schools mainly serve inner city children who had previously attended public schools. A study of 82 such private schools found that more than 60% of the students were scoring above national averages in both reading and math. Moreover, a majority of the students go on to top ranked parochial schools and public magnet schools.[129] The students in these schools wear uniforms, but study much of the same materials that students in the public Afrocentric schools do. Thus in both the public and private spheres, Afrocentrism appears to have had some success.

Is Afrocentric Education the Answer?

In light of the anecdotal evidence regarding the success of existing Afrocentric programs, is Afrocentrism the answer to the problems of educating black children? There are compelling arguments on both sides of the debate.

Proponents argue that all students, but especially blacks, need to learn the "truth" obscured by the Eurocentric curriculum, which seeks to hide African contributions to society. Second, they say that students will learn better if they see themselves as subjects and actors in history rather than victims. Third, an Afrocentric curriculum will provide the positive by-product of raised self-esteem.

Opponents contend that Afrocentrism intentionally exaggerates differences, thus exacerbating racial and ethnic tensions. Further, the "revisionist" history will lead to teachers telling their students lies or unproven "facts" to satisfy a "feel-good" curriculum. In addition, they say, in districts such as Los Angeles, where the district teaches hundreds of nationalities, teachers would have to implement Afrocentric, Thaicentric, VietNamesecentric, Italocentric, Hispanocentric and other "centric"

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[128] Toch, Afrocentric Schools: Fighting a Racist Legacy, U.S. News and World Report, v 111, December 9, 1991.

[129] Id.

curricula to meet the needs of the students. Moreover, the Afrocentric curriculum will not prepare the black students for the challenges of larger society. Finally, there is no evidence that kids will learn better if they know their "roots."

Though the opponents of Afrocentric curricula have more arguments that the proponents, the proponents have the more compelling arguments- with limitations. First, even opponents of the curricula agree that students do not learn enough about African and African-American history. Currently, students learn about blacks as powerless slaves, and then jump 100 years to slain civil rights leaders who "had dreams" but did little else. On television, students see blacks as criminals or as unattainable stars. The current curriculum in integrated and segregated schools has done little to erase the "badge of inferiority" stamped on black students that the Brown court found so important in 1954. Therefore, if there is evidence that students can achieve more through a curriculum which includes them, as seen in Camden, East Palo Alto and 82 private schools, then the curriculum change is worth a try.

But, the opponents make important points when they refer to unproved theories and splintered curricula. Thus, the ideal curriculum would be based on currently known facts, including highly probable hypotheses showing both sides, and would be taught to all students. A multicultural curriculum (which highlights Afrocentrism in all-black schools), would provide more balance than a solely Afrocentric education, and would probably be more palatable to school boards afraid to plunge into such a highly debated curriculum change.

Though some Afrocentrists call multicultural education "genocide" and Asante assails it as a "diversion from teaching African-American history"[130], school boards cannot teach students that one people are responsible for all achievements of

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[130] King, Educators Seek to Rewrite Textbook Wrongs, New Orleans Times Picayune, March 9, 1992, A4.

civilization unless they have provable evidence. Not only would this be intellectually dishonest, but a wholly Afrocentric education which did not address other cultures would marginalize those in the classroom who were not black, thus supplanting one ideology for another. As previously mentioned, even Asante does not agree with eliminating all European influence, and the Camden school which bears his name has shown that it is possible to have Afrocentric and "Latinocentric" educations coexist in the same school. Therefore, while the goal of instilling racial pride is an important one not currently met by existing curricula, a more multicultural than wholly Afrocentric curriculum, which meets the needs of the particular school population deserves examination.

If traditional European sources of knowledge, coupled with Afrocentric or multicultural sources replace the current wholly Eurocentric curriculum in all schools, black and other minority children will see themselves as more than former slaves but rather as important heirs to a rich history. Common sense dictates that black students will be more interested in learning if they know that blacks were important in ancient times as well as in modern times. More importantly, anecdotal evidence from several schools shows that this theory has merit. White children already have the educational advantage of learning that whites are conquerors, kings, founding fathers, inventors and presidents. Though teachers should not diminish those achievements, neither should they diminish the achievements of people of color.

Second, white students must also learn that theirs is not the only history worth studying. Rather than "balkanizing" students, a properly taught multicultural curriculum should foster a new understanding and appreciation of differences. Since American society and the rest or the world is increasingly becoming non-white-- by the year 2000, 43% of the American work force will be

composed of minorities[131]-- it is imperative that all students understand how minorities have contributed to civilization.

Finally, though there is only anecdotal evidence about the success of these programs, it is important that all students learn about Alexander Graham Bell and Lewis Howard Latimer, a black man, who helped to design the first telephone. They can learn about Alexander Pushkin in literature as a great Russian, and as a great black author. They can read about the great cultures and economies which thrived in ancient Africa when they learn about the Mayans and the Incans destroyed by European conquistadors. These are but a few of the facts about black achievement which are not in dispute. These are facts that all students need to learn but they are especially important for blacks, for if black children know that their ancestors have been capable of doing more than tilling cotton, then they cannot help but believe that they can achieve as well. This may be wishful thinking, but since the current system is inadequate, the curriculum change is worth a try, and the skeptics should allow the changes to succeed or to fail on their own merit.

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[131] Statement by Sandra Gray at the National Urban League State of Black America Press Conference, January 21, 1992. Transcript. Federal Information Systems Corporation.

PART III- THE PLANS- MILWAUKEE AND DETROIT

THE PLANS- MILWAUKEE AND DETROIT

Introduction-

I cannot conceive of an issue in recent years that has been less divisive than male academies. We have been inundated with communications of overwhelming support from many friends, old and new, residing outside our city limits. They have joined the vast majority of Detroiters in supporting the right to any educational environment for their own children. . . No public issue in a decade has produced greater unanimity between city and suburbs than the issue of Detroit's Male Academies.- Larry Patrick -former President of the Detroit School Board [132]

Detroit is not the first school board to attempt to open all-black, all-male classes or schools. Three years ago a school in Dade County, Florida opened 2 classrooms for black boys, one in first grade and one in kindergarten. [133] During that year, daily attendance rates increased 6%, test scores rose 9%, and school officials noticed a decrease in hostility.[134]

However, after only one year, the U.S. Department of Education declared the experiment an illegal violation of Title IX, because it discriminated against girls on the basis of sex.[135] According to the Department's Office of Civil Rights ("OCR"), the "proposal to assign students on the basis of sex, even though voluntary on the part of the boys who would participate, is not an exception allowed for by [Title IX]."[136]

Though I will discuss Title IX in more detail in a future section of this paper, in essence, Title IX provides that no educational institution receiving federal funds may discriminate on

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[132] Patrick, Detroit Parents Should Have the Right to Choose, Detroit Free Press, October 29, 1991.

[133] Tiffet, Fighting the Failure Syndrome, a radical proposal for black boys: separate classes. Time v 135 p. 83.

[134] Id.

[135] Id.

[136] Letter from Jesse L. High, Regional Director, Office for Civil Rights, to Dr. Joseph Fernandez, Superintendent of Schools, Dade County, Florida, dated August 31, 1988.

the basis of race, color, national origin or sex. 20 U.S.C. 1681 (1990) and 34 C.F.R. 106 et. seq. (1990) outline what the schools can and cannot do.

In 1990, the Wisconsin Department of Public Instruction proposed a plan similar to Detroit's. Before implementing the plan, however, the Milwaukee board sent a letter to the OCR asking, "under what conditions [may] a 'public school district [] create an all-black, all-male school to address the needs of black males."[137] The Acting Director for the OCR informed the Milwaukee board that under Title IX, "it would not be acceptable to separate the students on the basis of sex."[138] The Milwaukee Board has since opened its African-American Immersion School to all races and both sexes, and currently, girls comprise 50% of the enrolled students.[139]

Before addressing the Detroit plan, and the legal challenges, I will look at the Milwaukee immersion school and how it has fared since admitting girls.

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[137] See Garrett Complaint, paragraph 18, p. 8. Also, personal communication with Reuben Harpole, who is currently working with the Rites of Passage Program in Milwaukee.

[138] Letter from Cathy Lewis, Office of Civil Rights, to the Cultural and Equity Section, Wisconsin Department of Public Instruction, May 18, 1990.

[139] Personal Communication with Ms. Anita Sparks, Curriculum Implementor at Dr. Martin Luther King School in Milwaukee.

Milwaukee

White teachers, young girls .. . completely subvert what's needed at these schools to help young males. People that promote themselves as saviors of black people- the ACLU and NOW and the NAACP- are the very people going to court to stop parents from helping their children.- State Legislator Polly Williams[140]

In Milwaukee, blacks comprise 55% of the 97,085 public school students.[141] 60% of the black males drop out of school, and the average grade point for black males overall is 1.35.[142] According to Mr. Ken Holt, the original architect of the immersion schools and principal of the Parkman middle school, 80% of high school black males are failing. [143] In 1989, a citizen's task force study found that though black males made up 27% of the school population, they were 50% of the suspensions.[144] In Milwaukee, 94.5% of students expelled were blacks. [145] 80% of Black male high school students had less than a C grade point average. Of those who do graduate, 1/3 has below a C average.[146] In fact, out of 5,716 black males in Milwaukee high schools, only 125 had a G.P.A. over 3.0.[147] These statistics coupled with the low achievement and low self-esteem levels that the task force found prompted the Milwaukee School Board to vote 5-3 to open schools tailored toward addressing

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[140] School Geared to Black Boys Attracts Girls, Washington Times, September 3, 1991.

[141] Johnson, A Bold Experiment for Educating Black Males, USA Today. October 11, 1990.

[142] Id. and Bryant, All Black School Plan Gets Praise, Washington Times, August 29, 1991.

[143] Personal Communication.

[144]Personal Communication with Reuben Harpole. See Also Milwaukee School Keyed to Blacks, Newsday September 3, 1991, p. 15

[145] Schools Reach out to Black males

[146] Id.

[147] Self segregated schools seek to build self esteem

the needs of black males.

Since Milwaukee has complied with the OCR ruling, no other group has legally challenged the immersion schools, though many in the legal community oppose them.[148] Specifically, many people in both the white and the black communities argue that though the immersion schools are open to all races, the Milwaukee board has deliberately created segregated schools because it has emphasized from the beginning that the focus is on black children, especially black boys.[149] Further, some parents and civil rights activists worry that if the schools succeed, people and the courts could assume that there is no longer a need to enforce desegregation orders since blacks could be effectively educated in their own neighborhood schools. Many people, in sum, feared that the plan "flew in the face" of the goals of integration.[150] Moreover, the teachers union and the Board held heated negotiations because the union threatened to sue if the teaching staff was not at least 75% white in the immersion schools.[151]

The immersion schools have engendered public controversy among public officials such as Doris Stacy and state legislator, Polly Williams. Stacy, who is white has been one of the most outspoken critics of the plan calling it "unconstitutional," "educationally unsound," and "morally wrong."[152] Legislator Williams, who is black and who engineered Milwaukee's school choice program[153], argues

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[148] Id.

[149] Johnson, A Bold Experiment for Educating Black Males, USA Today- October 11, 1990. Also Personal Communication with Ms. Sparks of Dr. Martin Luther King Jr. School in Milwaukee.

[150] Personal communication with Ken Holt.

[151] Personal Communication with Mr. Holt.

[152] School Geared to Black Boys attracts Girls, Washington Times, September 3, 1991.

[153] The school choice program has also caused national controversy. The program allows poor children to get vouchers to attend private, non-sectarian schools.

that white liberals are using anti-discrimination laws to interfere with black families' choice of their children's educations.[154] She also feels that the presence of girls will hamper the ways in which black male teachers will be able to interact with the black boys.[155]

At Martin Luther King Jr. Elementary School, one of the two African-American Immersion Schools, only three of the teachers on the staff are black males.[156] In fact, the staff is 2/3 white and overwhelmingly female.[157] Teachers in the immersion schools must take 18 credits of African and African-American history and culture, take 10 days of staff development training, remain with the students through several grades, and make 36 home visits per year.[158]

According to Kenneth Holt, one of the architects of the plan, "the core curriculum [is] multicultural with an African-American focus."[159] Curriculum Implementor Anita Sparks explains that the curriculum has an "afrocentric focus, which means that we teach what every other child in Milwaukee has to learn, but we also teach the role that African and African-Americans have had in history."[160]

Students also meet one on one for an hour per week with a

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[154] Id.

[155] Id.

[156] Though two schools were proposed, the middle school has not yet opened. It is scheduled to open in September, and the students from the elementary school will continue their Afrocentric education there. Personal Communication with Ms. Sparks.

[157] Worthington, Milwaukee Idea shapes a new school, Chicago Tribune, 12/1/91, p.25

[158] Personal Communication with Ms. Sparks.

[159] Personal Communication

[160] Personal Communication.

mentor and wear uniforms.[161] On Saturdays, boys and girls go to separate classes to hear black professionals and mentors teach everything from how to eat in a restaurant and follow instructions to do chores to how to be a "man" or a "woman."[162] In these Rites of Passage Classes, boys and girls separate to learn from role models of their own gender. To become a "man," boys are often asked to perform some good act or deed, and contrary to what many opponents of gender separation believe, are taught to respect women.[163] The girls' portion of the Rites of Passage Program, Saturday Morning African-American Retention Training (SMART), is run by the Milwaukee Chapter of the Links sorority for professional black women.[164] Both boys and girls learn values and are encouraged to reach to attain higher goals than many of the people they see living in their neighborhoods.

Since the schools only opened in September, it is too early to determine whether there have been objective achievements in test scores or reading levels. According to Ms. Sparks, it takes at least three years for test scores to show a marked difference. However, she has seen changes in the students. She notes that the students are more eager to learn and she has seen an "elevation in self-esteem."[165] Principal Josephine Moseley has stated that she has seen her children look more interested in learning because the subject matter is meaningful to them.[166]

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[161] Williams, Milwaukee School Adopts an African American Focus, Philadelphia Inquirer, 9/3/91.

[162] Kelly, Rites of Passage Encourage High Expectations, USA Today, January 15, 1992, 06A. Also, personal communication with Reuben Harpole.

[163] Personal Communications with Reuben Harpole and Spencer Holland.

[164] Personal Communication with Ms. Sparks and Rites of Passage Encourage High Expectations.

[165] Personal Communication.

[166] Rites of Passage Encourage High Expectations.

Mr. Holt, nevertheless, regrets not having had the opportunity to work exclusively with boys, because he thinks that the experiment could have progressed faster in an all-male environment.[167] Legislator Williams, one of the strongest proponents of the all-male school has called the immersion schools "a joke" because "they are no different from any other school in Milwaukee."[168]

Is a Co-ed Immersion School the Answer?

The Milwaukee Immersion schools appear to have accomplished a part of their goals without having to endure the legal challenge. By placing the immersion schools in schools which were already black, the school board has a valid argument to counter those who say that the board has resegregated the schools. In fact, since as Ms. Sparks has stated the school is 100% black and has been so for over 18 years, people could not mount an effective legal challenge. In effect, the board is not making any rash new neighborhood assignments or upsetting an existing racially balanced district- the board is simply working within the existing racial framework.

By separating the children by sex for the <u>voluntary</u> Rites of Passage Program, the board has escaped Title IX problems because it has afforded both boys and girls equal opportunity to learn "values" and how to grow into responsible, ambitious adults- assumedly one of the main goals of proposing separate schools in the first place. Finally, the schools have used "effective schools research" which many of its critics cite as an alternative to all-male schools, and has become a pioneer in urban education.[169]

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[167] Personal Communication.

[168] Personal Communication on March 14, 1992

[169] Personal Communication with Ken Holt.

However, the school board was forced to cave into public pressure from white school teachers who demanded 3/4 representation on the teaching staff, and from lawyers who threatened to sue if the schools excluded girls.

But, since the school has adopted an Afrocentric curriculum and a Rites of Passage Program, is it fair to label it "a joke" as Ms. Williams has done? Though the school will not have the opportunity to see whether single sex education would have worked, they will have the chance to determine if curriculum changes, home visits and more "Afrocentric" teachers can make a difference in a black child's life. Though it may not be ideal, the immersion school will be an experiment nonetheless, and can provide guidance for those who wish to implement curriculum changes without going to the extreme of sex segregation.

On the other hand, the Milwaukee board, which prepared a lengthy task force report and conducted thorough research did not plan to be an experiment in coeducational, Afrocentric education. If a major component of the original plan was the all-male aspect of the schools, then the experiment, though worthy, cannot be complete. Moreover, if the students in the coeducational Milwaukee immersion schools succeed, their success will provide ammunition to those who say that separating the sexes is <u>not</u> the answer to the problems plaguing black males. Though the children may succeed in a coeducational environment, is that a sufficient reason to preclude experimentation in other areas, such as sex segregation?

It is ironic that the Detroit plan, which failed a legal challenge, has managed to maintain a relatively all-male status through community action. Therefore, though the Milwaukee schools may be coeducational, the teachers can see the results of the all-male schools through the success of the Detroit students.

The Detroit Plan

There comes a time when dedicated, enthusiastic and concerned parents, teachers and administrators must come together to implement a system of education which will ensure the education, social and personal survival of their students. The Male Academy is, therefore, established as an alternative school of choice . .

Now, therefore, let this school flourish as an instrument for positive educational social change in this community by instilling in its students a sense of responsibility, and a dedication to a life-long quest for truth, balance and justice.- Male Academy Charter Preamble

Despite the fact that the OCR had instructed the school boards of both Miami and Milwaukee that single sex schools and classes violated Title IX, and despite threats and letters from NOW and the ACLU, the Detroit school board did not decide to admit girls until ordered to do so by a federal court.

The Need- The School Board's Evidence

Like the educators in Miami and Milwaukee, the Detroit school board felt that it was the school's responsibility to help solve the crisis in the black community. The School Board found that:

> for high school students who are in the correct grade for their grade level.. . the drop-out rate hovers around 25%. For students one year behind in grade . . . the drop-out rate increases to 53% . . . When students lag two years behind in grade when compared to their age mates, the drop-out rate increases to 80%. The male high school drop-out rate is 45% over four years.

According to the Board, "these statistics have serious implications for the Detroit Public Schools since the system is responsible for educating a significant proportion of . . . Michigan's African-American male school age population."[170]

The Board also found that black males lagged in other areas. In Detroit, only 45% of black men graduate, while 60% of girls

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[170] Detroit Board of Education, Male Academy Grades K-8. A Demonstration Program for At Risk Males (DRAFT), December 7, 1990. Provided by Detroit School Board. Hereafter referred to as "The Report"

graduate.[171] School officials found that after factoring in the graduate's ability to keep jobs, the system actually fails over 75% of the black male students.[172] 18.3% of Detroit's black males were unemployed in 1990, compared to 7.1% of white males. 60% of drug offenders in the prisons are 8th and 9th grade dropouts.[173] Further, the Board reported, 3500 of the 4100 youth admitted to the Wayne County Youth Home in 1989 were urban males.[174] Homicide is the leading cause of death for boys in Detroit over the age of 9.[175] The Board found that in Wayne County, the homicide rate for black males age 15-24 was 14 times the national average for all males, twice the rate for other black males in Michigan, and 47 times the rate for white males in Michigan.[176] Thus, the Board reasoned, statistically, black males were in more dire straits in education and in larger society than other males in both Michigan and around the country.

The Board also compared black males to black females, looking at achievement, attendance, graduation rates, and school discipline. The Board found that black males lagged behind black females in every category and at almost every grade level. For example, black males were 39% of the graduates, while black females were 61%. The male short term suspension rate was twice that of the females. 54% of black males dropped out versus 45% of black females.[177]

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[171] Male academy despite roadblocks, innovative school is worth a try, Detroit Free Pres, February 2, 1991, 8A

[172] Id.

[173] Male Academy Despite Roadblocks, Innovative School is Worth A try

[174] School Board Report.

[175] Watson, Waiting for Equality Won't Solve Black Males' problems, Detroit Free Press, June 2, 1991.

[176] Id.

[177] School Board Report.

Black females also fared better than males outside of school. In 1989, 189 Detroit males between age 12-24 were murdered versus 37 female victims in the same age group. The Board also found that females received "more schooling, more hours of employment and training services, and more health and child welfare services than urban males. . . Females are not experiencing problems to the same severity and extent. When they do, pregnancy and parenting appear to be the cause."[178] The Board felt that separate existing programs, however inadequate, existed to help the females, whereas no programs existed to help the males. The Board did say that it proposed to open academies for females "soon."

Armed with these statistics, the Board proposed to open all-male academies, a three year pilot program, as an alternative school of choice-- a school operated for students from all over the city which offers "unique" and "innovative" programs which focus on the "special problems of an identified population of students."[179] The Board acknowledged that the district already provided single sex programs for at risk students including Big Brother/Big Sister, schools for pregnant girls, male responsibility projects sponsored by the Urban League and programs at two elementary schools.[180]

However, the Board envisioned a different kind of program which would have preventative components; serve grades K-8; have an Afrocentric and futuristic (preparing for 21st century jobs) curriculum; stress self-esteem and civic responsibility; teach children to become "skilled in the art of test taking;" and teach at least one marketable skill.[181] The schools would also encourage parental participation and have scheduled activities before and after school and on weekends.

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[178] Id.

[179] Id.

[180] I will discuss the Monnier School Save a Star Program in a later section.

[181] The Report.

The Board used mass mailings, church groups, radio announcements and community agencies to attract its target population of males in poor, single-mother households.[182] The Board decided to select a mixture of children of socio-economic background and abilities, but directed "special efforts" at those most at-risk.[183] The plan proposed to increase the number of black male teachers through incentives; include a motivational specialist to help the boys build self-esteem; include an Afrocentric Rites of Passage Program; and have an ideal ratio of 20 students to one teacher.[184]

Though the Board received 1200 applications for 562 slots, legal challenges prevented the proposal from going forward.[185]

The Legal Challenges

It has come to my attention that the district is contemplating an elementary school for boys only. Obviously the intent of the Boys' Developmental Academy is a good one. However, I must bring to your attention that such a sex segregated school is illegal . Title IX clearly prohibits such action. . . Clearly, to exclude girls would be a violation of the law.- Jo Jacobs of the Michigan Department of Education.[186]

Fully ten months before the Detroit Board issued its Report, the Michigan Department of Education informed the Board that to do so would violate Title IX. One year later, the Michigan branch of NOW wrote to the superintendent of the school board about the

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[182] Id.

[183] Id.

[184] Id.

[185] Kelly, All-male School Concept Fought, USA Today, August 6, 1991, p. 1D.

[186] Letter from Jo Jacobs, Coordinator at the Office for Sex Equity in Education, Michigan Department of Education 2/7/90 to Dr. John Porter, Superintendent of Detroit Public Schools.

illegality of the proposed academies.[187] According to NOW, the superintendent responded by letter to NOW stating that the plan would not be modified to admit girls.[188] For the next two months, NOW attempted to change the minds of the Board through policy statements and position papers sent to each Board member, and through attempts to speak with members. In July, the ACLU and NOW joined forces to attempt to convince Board president Larry Patrick- who had not returned NOW's phone calls- to change the policy. [189]

NOW had three main misgivings about the Academies:

> First, creating male only educational activities and programs implies that it is the presence of females, rather than economic and social conditions founded on poverty, race and sex discrimination, which has led to the present failure of schools to educate the majority of children in this nation's urban schools. Second, these programs are being implemented without regard to their impact on African American girls and other students in urban public school systems who have their own very severe needs. Third, single sex public pre-college education is inconsistent with the combination of academic achievement and intergroup/interpersonal skills development goals of the public education system and may violate federal, state and local civil rights . . .[190]

On August 5, three weeks before the Academies were scheduled to open, plaintiff Shawn Garrett, represented by NOW, filed suit on behalf of her four year old daughter.[191] Plaintiff Nancy Doe, who

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[187] Affidavit of Martha F. Davis, counsel for NOW, paragraph 2.

[188] Id.

[189] Id.

[190] NOW Legal Defense and Educational Fund, Public Education Programs for African American Males: A Women's Educational Equity Policy Perspective, Working Draft, July, 1991.

[191] Shawn Garrett dismissed her action voluntarily before oral argument stating that she had been harassed by members of the community. Garrett v. Board of Educ. of School District of the City of Detroit 775 F. Supp. 1004 (E.D. Mich. 1991) Hereafter referred to as Garrett. In fact, the newspaper reports that she received death threats. Tough on Women: 1991 Was a Year of Shame and Discouragement, Detroit Free Press, January, 5 1992.

proceeded under a pseudonym, had three daughters aged 11, 6, and 5. The plaintiffs requested a temporary restraining order to enjoin the Board from opening the schools. The court denied the motion and set an expedited date for hearing on the preliminary injunction motion.[192] Judge Woods of the Eastern District of Michigan heard oral argument and issued an opinion from the bench. He then issued a written opinion granting plaintiff's request for a preliminary injunction.

Judge Woods' Opinion

> **Indeed there has a been a cry for help within this community. It is possible, the Court sees it as possible, that the exclusion of some can be rectified to the benefit of all, including the young, black male, who is indeed an endangered species. Perhaps it may be that implementation here is premature. There are windows of opportunity here for the defendants in this Court's considered judgment. However, this Court is not co-counsel for one side or the other, nor is an amicus from which either party could draw inference from.-** Judge George Woods.[193]

In the reported Garrett opinion, which supplemented his bench trial ruling, Judge Woods held that though the state had an important interest in helping black boys, it was insufficient to override the females' interest in attending all-male schools. Though he felt that the Board's reasons for establishing the academies were important governmental objectives, he found that he Board had not demonstrated that the exclusion of girls was substantially related to the achievement of those goals. Further, Judge Woods wrote, the Board had offered no evidence establishing that the presence of girls in the classroom was a cause of the boys' problems. He also ruled that Title IX of the Education Act did not authorize the opening of single sex schools. I will deal

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[192] Garrett at 1005.

[193] Statement of Judge Woods from the bench at Garrett preliminary injunction hearing. Transcript, p. 28

with each of these issues in turn.[194]

The Constitutional Problems- Equal Protection

The court first looked at the constitutional implications of the plan.[195] Judge Woods cited Mississippi University for Women v. Hogan, 458 U.S. 718 (1982) in which Justice O'Connor held that it was unconstitutional to deny admission to a man to a nursing school solely because of his gender. In Hogan, the school and the state justified the admissions policy by stating that it compensated for the past discrimination against women. The Hogan Court ruled that the exclusion of men violated the Equal Protection Clause of the 14th Amendment because the school could not show that the sex-based "classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." Hogan, 458 U.S. at 724.

The Garrett court also relied on Craig v. Boren, a 1976 Supreme Court case, which challenged an Oklahoma statute which allowed the sale of beer to young women at age 18 and young men at 21. Craig v. Boren, 429 U.S. 190 (1976). The legislature reasoned that since young men were statistically more likely to have drunk driving accidents, it was reasonable to withhold liquor from them until they were older. The Craig Court found that the means of the regulation (the ban) and the ends sought (traffic safety) was too tenuous, especially since the statute did not ban the drinking of beer. In essence, the case holds that government- no matter how well intentioned- cannot withhold rights from one group without a tight fit between the means and the end.

Applying the Hogan and Craig principles of intermediate level scrutiny to the Garrett case, Judge Woods looked at the ends sought

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[194] As stated in the Introduction, I will deal only with the federal statutes at issue here so that the ruling will have a broad application.

[195] The court combined the state and federal constitutional analysis because the plaintiffs did not allege any greater protection offered by the Michigan Constitution. Garrett at 1006.

and the means used. Plaintiffs argued that "the Board's policy of excluding girls inappropriately relies on gender as a proxy for "at-risk" students." Garrett at 1007. The court found that "while these [Board's] statistics underscore a compelling need, they fall short of demonstrating that excluding the girls is substantially related to the achievement of the Board's objectives." Id. An important factor for the court was the Board's own admission that there is an "equally urgent and unique crisis facing . . . female students." Id.

Though the court stated that the Board ignored the fact that females drop out of school and commit crimes as well, the court seemed to be ignoring the great disparities in the statistical evidence offered by the Board-- the judge did not give much credence to the evidence cited in the Board's twelve affidavits which cited research that boys and girls performed better academically in sex segregated environments than in coeducational environments.[196]

Plaintiffs also argued that the Board could not justify the gender classification because the special curriculum and Rites of Passage Program meant to bolster self-esteem, civic responsibility and general achievement, were issues that all adolescents had to face as a part of growing up. The Board responded that unlike in Hogan, where the state argued that it was compensating for past discrimination, here, the Board had statistical evidence to show that the current educational system had failed males more than females and should be changed.[197] Therefore, the Board reasoned, the single sex academies were a viable alternative.

Judge Woods, "wary of accepting such a rationale," felt that the Board had failed to prove that the coeducational factor of the current educational system had failed the boys, and not some other factor. He also expressed concern that should the academies

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[196] See also section on sex segregation evidence supra.

[197] Garrett at 1007.

succeed, people would assume that the absence of girls, and not other factors in the academies, had led to the success. Though the Board argued that the fact the females also fail should not diminish the strength of their objectives, the court still found that the Board had not met its burden of proving a nexus between the objectives and the means as required by Hogan.

The Board had also introduced evidence of mentoring and other programs which excluded girls as proof of the efficacy of sex segregation, and argued that the establishment of the experimental schools would be critical to determining which programs do and do not work. However, the judge remained unconvinced stating:

> None of these findings meet the defendant's burden of showing how the exclusion of females from the Academies is necessary to combat unemployment, dropout and homicide rates among young males. There is no evidence that the educational system is failing urban males because females attend schools with males. In fact, the educational system is also failing females.

Garrett at 1008.

The Board did not dispute three crucial facts about the plan. First, plaintiffs had argued that the voluntary nature of the assignment did not make the plan constitutional. Second, plaintiffs stated that the experimental nature of the plan did not save it from constitutional scrutiny. Third, plaintiffs contended that the academies did not qualify as affirmative action programs. Since the defendants did not argue any of these points, the court chose not to address them. [198]

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[198] Id. Note, that the judge would not have accepted the Board's affirmative action argument even if the Board had made one. In the transcript of the hearing, Judge Woods states, "the defendant next refers the Court to cases involving affirmative action programs but admits that the Male Academies are not such programs. Well . . . the Board could not satisfy the criteria necessary for an affirmative action exemption, since it has not demonstrated past 'gender inequity' exists in favor of girls, thus justifying reverse discrimination. And we go to the City of Richmond [sic] case, United Stated Supreme Court 1989, for that proposition." Transcript, p. 21.

Title IX [199]

As previously stated, Title IX provides that no educational institution receiving federal funds may discriminate on the basis of sex (the only relevant inquiry here). The statute, however, provides several exceptions. See 34 CFR 106.34. The statute does not prohibit separation in physical education classes (in sports requiring bodily contact); human sexuality classes; and certain vocal classes. The statute does not apply to educational institutions of religious organizations contrary to religious tenets; institutions whose primary purpose is to train people for the military; institutions which have continually and since their establishment been single sex; tax exempt sororities and fraternities; and youth groups such as the YMCA or girl scouts. 34 CFR 106.3 also allows a body to take affirmative action to overcome the effects of conditions which resulted in limited participation by persons of a particular sex.

The regulation provides that schools may not give people "different aid, benefits, or services" because of their sex, and institutions may not carry out any of their educational programs or prohibit students from participating in programs on the basis of sex. 20 USCA 1681 states that the statute applies only to vocational, professional, graduate and public undergraduate institutions, and thus, Title IX does not apply to admissions policies in public primary and secondary schools.[200]

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[199] The judge miscites the statute throughout the opinion. Sometimes he refers to it as 24 CFR 106 and sometimes he uses the correct citation 34 CFR 106.

[200] See also Berkelman v. San Francisco Unified School District, 501 F. 2d 1264 (9th Cir. 1974) ("although Congress condemned discrimination in the basis of sex under Title IX . . . the prohibition with regard to sex discrimination in admissions. . . was not extended to public secondary schools. 20 USC 1681(a)(1)) The Berkelman court, however, found that the omission was due to uncertainty about how such prohibition would affect public schools, and ruled that the intent to help females to achieve on the same level as males meant that a prestigious college prep high school could not use higher admissions standards for females than for

Plaintiffs argued that since the Academies did not fall within the list of exceptions, the Board violated Title IX by establishing them. The Board countered that Title IX excludes public elementary and secondary schools from it's coverage and that the legislative history recognized the need for experimentation. The court found the defendant's argument "flawed" because Judge Woods felt that the exemptions for admissions applied primarily to historically single sex schools, and was not "an authorization to establish new single sex schools." Garrett at 1009.

However, though the judge stated that "no case has ever upheld the existence of a sex-segregated public school that has the effect of favoring one sex over another," id., the judge ignores the legislative intent of the statute, at least regarding admissions policies. Senator Bayh, author of the amendment stated:

> One result of the House approach is that all single sex elementary and secondary institutions- both public and private- would be required to become co-educational. While this may be a desirable goal, no one even knows how many single sex schools exist on the elementary and secondary levels or what special qualities of the schools might argue for a continued single sex status. Therefore, my amendment narrows the coverage of admissions policies somewhat- pending a thorough study by the Commissioner of Education.

118 Cong. Rec. 5804 (1972). Senator Bayh then proceeded to give statistics on the absence of women in higher education, the primary reason that he had proposed the amendment in the first place.

Although floor comments are not the most persuasive authority, many cases construing Title IX have noted that it has a sparse legislative history. No committee report exists because the senator introduced it on the floor. Therefore, the Supreme Court in North

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males. See also Vorchheimer v. School District of Philadelphia, 532 F.2d 880 (3rd Cir. 1976) (the statute excludes from its coverage the admissions policies of secondary schools). See also Lamar, The Expansion of Constitutional and Statutory Remedies for Sex Segregation in Education: The Fourteenth Amendment and Title IX of the Education Amendments of 1972, 32 Emory L. J. 1111. (1983) ("... all private schools except at the graduate and professional school levels are exempted as well as all public elementary and secondary schools.")

Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982) has stated that because of the lack of legislative history, "Senator Bayh's remarks, as those of the sponsor of the language ultimately enacted, are an authoritative guide to the statute's construction." Id. at 526-527. Thus, though the author of the amendment specifically stated that elementary and secondary school admissions policies did not fall within the scope of his amendment, the judge chose to interpret Title IX otherwise.

Further, the judge wrote that it was "unclear" whether all of the course offerings at the proposed Academies would be available to other students at other schools. Therefore, since plaintiffs did not rely solely on the admissions prong of Title IX, but instead had argued that females would be denied the "benefits" of the Academies, the court found that the Board had violated the statute.[201]

Since the judge found that the Plaintiffs had proved that the all-male academies would cause them irreparable harm, he ordered the Detroit School Board to admit girls. Unlike the Milwaukee case, however, the three academies are not 50% girls and 50% boys. In fact, despite the Plaintiffs' victory, the schools are overwhelmingly male.

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[201] The last federal component of the Garrett case involves the Equal Educational Opportunities Act (EEOA) 20 USC s 1701, et. seq (1990). The statute prohibits student assignment to schools other than neighborhood schools if it results in a greater degree of segregation on the basis of . . . sex. Congress passed the Act to rid the country of dual school systems based on race. The judge noted that there had only been one reported decision which interpreted the EEOA in the context of sex discrimination. In United States v. Hinds County School Board, 560 F.2d 619 (5th Cir. 1977), the court held that a plan to have all of the districts public schools segregated by sex violated the EEOA. However, the Garrett court distinguished Hinds on the facts because the Hinds plan was not voluntary, as the Detroit plan was, and the Hinds plan required all students to be segregated by sex, while the Detroit Academies numbered only 3 out of 251 schools in the district. Therefore, the court found that the plaintiffs had not carried their burden on this cause of action.

The Detroit Academies After the Ruling

We categorically reject as specious the stated position of the plaintiffs equating same sex educational facilities with the legally mandated segregation of the races, the memory of which stains the honor of American history. This ludicrous and illogical position, which is the basis of their argument against the male academies, demonstrates an ignorance of and lack of sensitivity for the African-American experience.- Frank Hayden, current President of the School Board[202]

In answer to Patrick's [former Board President] question, "if single sex-education were as morally repugnant as legally mandated racial segregation, how do these schools enjoy the support of decent parents from all racial, ethnic and financial backgrounds?": It is blatantly clear that in this society, gender apartheid is still socially acceptable, even to "decent parents" and other "Americans of goodwill," while racial apartheid is not.- Karen E. Sundberg Vice President for Membership NOW.[203]

Despite considerable community support, the Detroit School Board voted 6-3 to settle the lawsuit rather than pursue a million dollar appeal. The Board had allotted 136 slots for girls, but by mid-September, only 47 girls had applied, and only 350 of the 560 boys assigned had shown up for class.[204] Currently there are 30 girls and 550 boys at the three schools.[205] One reason for the dearth of girls at the academies may be the Detroit Coalition for All Male and All Female Academies. After the judge's ruling, the Coalition urged parents to keep their girls in coeducational schools until an all female academy opened in March.[206]

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[202] Hayden, Rationale Behind Academies Dictates Legal Pursuit of that Goal, Detroit Free Press, September 9, 1991.

[203] Sundberg, Gender Apartheid, Detroit Free Press, November 8, 1991.

[204] Life in the Academies. District Seeks Students as Kids Adjust, Detroit Free Press, September 17, 1991.

[205] Wilson, Expert Dislikes all-male schools, Detroit Free Press, February 24, 1992.

[206] Detroit Coalition Trying to Set Up Single Sex Schools, Detroit Free Press, January 25, 1992.

In March an African Centered math and science academy is scheduled to open. The Coalition has urged the community to make it all-female, but Superintendent McGriff has stated that it is open to all students. The Coalition says that since it is not bound by the judge's ruling, it has the right to exercise its rights of free speech by encouraging females to stay away from the old academies and apply to the new one.[207] According to Larry Patrick, former President of the School Board, currently 80% of the applications to the new academy are from girls[208]; further, the Coalition reports that some parents have already agreed to move their daughters from the academies to the new Jameson Academy.[209]

Rather than fight a legal battle in the courts, the Board has decided to try to change the state laws which prohibited the academies. In mid-September, Representative Hansen Clarke introduced legislation to amend the laws to allow for experimental schools like the academies.[210] Larry Patrick has stated that if the state laws allow the academies, the Board will pursue the case again in federal court.[211] However, the academies would still be subject to scrutiny under the U.S. Constitution and Title IX. These may not be legal battles that the Board can win.

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[207] Id.

[208] Wilson, Expert Dislikes All Male Schools, Detroit Free Press, February 24, 1992.

[209] Id.

[210] Detroit Board Yields on Male School Fight. Case Abandoned, Change in Law Sought, Detroit Free Press, November 7, 1991.

[211] Id.

Other Legal Issues:

The fundamental question raised by this controversy is: who shall be empowered to make decisions affecting the education of Detroit's children? Will it be the leadership of (the ACLU) and (NOW), most of whom do not reside in the city of Detroit? Or will Detroit's parents and voters retain the right to expend their tax money as they see fit on behalf of the city's children?- Dr. Deborah McGriff, Detroit School Superintendent August 13.[212]

There are several legal avenues which the Detroit and Milwaukee Boards could have pursued, but which are beyond the scope of this policy-oriented paper. For example, in Milwaukee, the teachers unions threatened possible legal action if the faculty of the immersion schools were not 75% white.[213] The boards could investigate the legalities of affirmative actions plans to hire more black male teachers.[214] The boards could also have framed the all-male schools as affirmative action programs. However, the Detroit Board itself admitted that the programs did not qualify as affirmative action programs, and as Judge Woods stated it would have been difficult to prove that boys were denied equity in education because of their gender.

The Detroit Board could have argued that it had the autonomy

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[212] Patrick, Detroit Parents should have the right to choose, Detroit Free Press, October 29, 1991.

[213] Personal communication with Mr. Holt.

[214] In 1986, the Supreme Court disallowed a contract which a school board and teacher's union negotiated to protect recently hired minority teachers from layoffs. Wygant v. Jackson Board of Education, 476 U.S. 267 (1986). The contractors had attempted to keep as many minorities on staff to act as role models for black students. But the plurality held that "because the role model theory does not necessarily bear a relationship to the harm caused by prior discriminatory hiring practices, it actually could be used to escape the obligation to remedy such practices by justifying the small percentage of black teachers by reference to the small percentage of black students. . . Carried to its logical extreme, the idea that black students are better off with black teachers could lead to the very system the Court rejected in Brown v. Board of Education". 476 U.S. at 276. Therefore, it is uncertain how sympathetic a court would be to the role model justification for preferential hiring of black male teachers.

to determine the proper education for its children. The Board could assert that since it had conducted research and gathered information from experts, it had the right to propose academies based on its reasoned deliberation. Michigan law states that the Board has the power to determine the curriculum and to make reasonable regulations. See MCLA s 380.1282 and s 380.1300. Though the Board could argue that it thus has the right to seek experimental alternatives due to the state of emergency depicted by its statistics, the Board is still a creature of the state and is thus bound by the rights granted by the state. Further, it would have to counter the argument that the Academies would still violate the rights of other students by discriminating against them in violation of the Michigan constitution and other state law.

Besides the state law problems, the Boards would still have to overcome the hurdles of Title IX and the Fourteenth Amendment. As mentioned in the previous section, Title IX does not prohibit single sex admissions, however, it does prohibit a school from providing different benefits on the basis of sex. Thus, unless all of the schools provided the same programs, curricula, mentoring programs and other "benefits" of the immersion or African centered academies, a court could still strike the experimental schools down as violative of Title IX.

There are, however, some feasible legal strategies. In addition to the state law issue, the Board should have attempted to petition Congress to amend Title IX to allow the establishment of experimental single sex academies for both sexes. By so doing, the Board would avoid the argument about unequal treatment of girls from NOW and the ACLU.

If the Board had asked for hearings on the issue and specified that the amendment would cover only select experimental academies which had the approval of a bi-partisan, bi-cameral congressional committee, the Board could have escaped the Title IX problem and perhaps set the stage for other single sex academies to open in other cities to provide a true empirical measure of the success of single sex public schools. As the public policy section details,

the President and the Secretary of Education favor the all-male academies.

If the Board allowed the Congress and other interested parties to set mutually agreeable parameters, the Congress may have passed an amendment to Title IX. Of course, one problem with the amendment process is that the Congress may choose to cave in to pressure from powerful interest groups such as the NAACP and NOW-- groups which may be more interested in preserving their civil rights gains than allowing an experimental academy. Thus, a compromise solution and participation from all interested parties would be crucial in fashioning a viable amendment.

The equal protection argument is another obstacle. Judge Woods found that the Board could not prove a sufficient nexus between the failure of the boys in society and the presence of girls in the classroom. Thus, though the Board proved that it had an important governmental interest in "saving" black boys- even the judge acknowledged that they were an endangered species- it could not prove that there was a substantial connection between co-education and the larger societal problems.

The Board introduced several affidavits in support of single sex education, however, the judge did not feel that it had met the burden, even in a situation of crisis. The board did, and could have stressed on appeal, the fact that the experimental nature of the program was the only way to see whether separation would have had a substantial effect. Without the chance to prove that the current coeducational system had a direct impact on black boys' futures, the Board could not prove its assertion that all-male academies could work- an admittedly circular argument. On the other hand, even if the academies had gone forward and been successful, it would be difficult to ascertain whether the "maleness" or curriculum change or some other factor had caused the success.

One component of the equal protection clause is that people who are similarly situated must be treated similarly. The Board could argue that since the Supreme Court has refused to consider gender a suspect class, it has recognized the differences between

the sexes. Second, and more importantly, the Board appears to have had enough evidence to prove that in inner cities, girls and boys are not similarly situated. Therefore, the court could have allowed the experimental schools to go forward based on the assumption that black girls and boys are not equal in the realm of public education.

There are however, two important legal issues that I will discuss in more detail because of their policy implications-- the issue of separate but equal sex segregated academies and the issue of parental right to control education.

Can there be Separate but Equal Single Sex Schools?

We are not unsympathetic to [the plaintiff's] desire to have an expanded freedom of choice, but its cost should not be overlooked. If she were to prevail, then all public single-sex schools would have to be abolished. The absence of these schools would stifle the ability of the local school board to continue with a respected educational methodology. It follows too that those students and parents who prefer an education in a public, single-sex school would be denied their freedom of choice. The existence of private schools is no more an answer to these people than it is to the plaintiff.

It is not for us to pass upon the wisdom of segregating boys and girls in high school. We are concerned not with the desirability of the practice but only its constitutionality. Once that threshold has been passed, it is the school board's responsibility to determine the best methods of accomplishing its mission.- Vorchheimer v. School District of Philadelphia, 532 F.2d 880, 888) (3rd Cir. 1976), affirmed by an equally divided Supreme Court.

Since the Detroit school board is on the verge of opening an overwhelmingly female academy, and many have proposed closing admissions to the academies based on sex, it is worth examining the question of whether NOW and the ACLU could have challenged the Board for opening a male and female academy at the same time. Based on NOW's stance against single sex education in public schools, one can assume that NOW would have attacked the academies as being

"separate but equal."[215]

However, Detroit would not have been the first city to have single sex public schools. Philadelphia has had all male and all female high schools for over 100 years. In 1976, the Court of Appeals for the Third Circuit held that when attendance at either of two single sex high schools was voluntary and the schools offered essentially equal educational resources, the schools did not violate the 14th Amendment or Title IX. Vorchheimer v. School District of Philadelphia, 532 F.2d 880 (3rd Cir. 1976). In Vorchheimer, a female high school honor student sued to gain admission to a prestigious all-male college preparatory school, even though there was a comparable high school for females. Susan Vorchheimer claimed that the male school offered better classes and had a better academic reputation than did the female school, and that she was unlawfully denied admission because of her sex.

The court found that since Title IX did not prohibit single sex admissions policies, and the Equal Educational Opportunities Act was too ambiguous to control in this case, the court would base its determination on the Constitution.[216]

The Vorchheimer court distinguished a long line of sex discrimination cases stating that in those cases there had been:

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[215] Due to lack of funds, Milwaukee, unlike Detroit, had no plans to open a separate female academy. Personal Communication with Ken Holt.

[216] The court spent a great deal of time discussing the EEOA, noting that it was originally meant to deal with race segregation and dual school systems. The judge stated that the committee report did not explain why sex appears in some parts of the bill and not in others. He observed that while in early drafts of the bill the Congress stated that dual school systems based on sex are unconstitutional, 20 USC 1701-1721 does not prohibit the states from segregating the schools on the basis of sex, though it specifically proscribes against separation based on race, color or national origin. 20 USC 1703(a). The judge further noticed that "not once during the extended and heated discussions was there ever any reference to single sex schools." Vorchheimer 532 F.2d at 884. Note that Judge Woods also noted that the EEOA did not apply to the Garrett case stating that only one case (Hinds) had construed the EEOA in the sex segregation context.

> an actual deprivation or loss of a benefit to a female which could not be obtained elsewhere. . . In each instance where a statute was struck down, the rights of the respective sexes conflicted, and those of the female were found to be inadequate. None of the cases was concerned with a situation in which equal opportunity was extended to each sex or in which the restriction applied to both. And significantly, none occurred in an educational setting.

Vorchheimer, 532 F.2d at 885.[217] The court also distinguished Berkelman v. San Francisco Unified School District, 501 F.2d 1264 (9th Cir. 1974) where the school used a quota system. Moreover, the court distinguished Brown and other civil rights education cases, stating that those cases alleged discrimination based on race, while this case alleged gender discrimination. Since race is a suspect class and gender is not, wrote the court, "there are differences between the sexes which may, in limited circumstances, justify disparity in the law." Vorchheimer at 886.

Significantly for the Garrett case, the court noted that:

> The record does contain sufficient evidence to establish that a legitimate educational policy may be served by utilizing single-sex high schools. The primary aim of any school system must be to furnish an education of as high quality as is feasible. Measures which would allow innovation in methods and techniques to achieve that goal have a high degree of relevance. Thus, given the objective of a quality education and a controverted, but respected theory that adolescents may study more effectively in single-sex schools, the policy of the school board here does bear a substantial relationship. (emphasis added).

Id. at 887-888.

Thus, the court found, because the single sex high schools

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[217] The court found that the following cases did not control: Reed v. Reed, 404 U.S. 71 (1971) (arbitrary statute prohibited female from administering an estate when a qualified male was available); Fronteiro v. Richardson, 411 U.S. 677 (1973) (federal law allowed male military personnel to claim spouses as dependents, but women could only claim spouses if husband received 1/2 support from her); Stanton v. Stanton, 421 U.S. 7 (1975) (statute allowed different support payment system for males and females).

offered substantially similar educational opportunities, and because of the evidence supporting single-sex education, the school board had not violated the Constitution by maintaining separate schools.[218] The Supreme Court affirmed the decision without opinion, therefore Vorchheimer is still good law. (affirmed by an equally divided Court 430 U.S. 703 (1977)).[219] Moreover, the Court

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[218] Many critics of Vorchheimer state that the 3rd Circuit erroneously allowed the maintenance of single sex schools when the resources in the boys school were superior in important ways, and when the evidence on single sex schools was sparse. For example, the judge relied on evidence from schools in New Zealand, though the author stated that the results would not necessarily hold true in other settings. The only other evidence submitted stated that there were more women in the Who's Who in America directory who had attended single sex schools than coeducational schools. See eg Rhode, Association and Assimilation, 81 Nw. U. L. Rev. 106 (1986). Others argue that its holding is not as persuasive after Hogan, because Hogan now stands for the proposition that separate but equal is unconstitutional. See Lamar, The Expansion of Constitutional and Statutory Remedies for Sex Segregation in Education: The Fourteenth Amendment and Title IX of the Education Amendments of 1972, 32 Emory L.J. 1111 (1983). Still others have considered "the conclusionary analysis used by the Vorchheimer court . . . dangerous because it can perpetuate subordination through the reinforcement of stereotypical views." Colker, Anti Subordination above all: Sex, Race and Equal Protection, 61 N.Y.U. L. Rev. 1003 (1986). However, many cases have cited it as good law. See eg Haffer v. Temple University, 678 F. Supp. 517, 525 (E.D. Pa. 1988) ("this circuit has held that the provision of separate and equal high schools for males and females is constitutionally permissible"); United State of America v. Commonwealth of Virginia, 766 F. Supp 1407 (W.D. Va. 1991) (citing favorably the use of empirical evidence about sex segregated education); Clark v. Arizona Interscholastic Association, 695 F.2d 1126, 1131 (9th Cir. 1982) (citing Vorchheimer for proposition that separate athletic teams would be constitutionally permissible)

[219] The schools are no longer completely single sex however. In 1983, three female students sued for the right to attend Central High School claiming that the male only policy violated the Pennsylvania constitution and the Fourteenth Amendment to the U.S. Constitution. Unlike the Vorchheimer court, the Court of Common Pleas found that the educational opportunities were not equal. Thus, the girls were admitted to the school. The school board did not appeal the decision. Newburg v. Board of Pub. Educ., No. 5822 (Ct. of Common Pleas, Philadelphia County, September 28, 1983.) See also Lamar, The Expansion of Constitutional and Statutory Remedies

in Mississippi University for Women v. Hogan, supra, stated that it was not "faced with the question of whether States can provide separate but equal undergraduate institutions for males and females," citing Vorchheimer. Hogan, 458 U.S. 718 n 1.

Finally, in another separate but equal case decided two months before Garrett, a federal court in Virginia held that maintenance of an all-male military institute did not violate the equal protection clause. United State of America v. Commonwealth of Virginia, 766 F. Supp. 1407 (W.D. Va 1991). The state of Virginia and the Virginia Military Institute ("VMI") argued that they could discriminate against women because they had a legitimate interest in "diversity in education."[220]

The VMI court distinguished Hogan by arguing that here there was no affirmative action policy, and in fact, the male-only policy promoted diversity within the statewide system of higher education Id. at 1411. Further, the court noted that females had access to the same courses, including military instruction at VPI. The judge also put great weight on the evidence provided by Virginia that students achieved more at single sex institutions. Perhaps most importantly, the introduction of women would cause "a new set of stresses" and "changes in methods of instruction and living conditions." Id. at 1412. The judge cited the disruption at West Point as an example of the distractions that females would cause to the detriment of the "esprit de corps" of the VMI experience.

Both VMI and Vorchheimer can help the Boards' case, but they can be distinguished. Both VMI and the Philadelphia schools had been traditionally single sex schools, thus meeting Title IX exemptions. On the other hand, both cases were ultimately decided on constitutional grounds. The Vorchheimer court, unlike the Garrett court, recognized the benefits of single sex education, and found that the school board had met the burden of proving a

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for Sex Segregation in Education, supra at n. 218.

[220] The court noted that VMI fit the military institution exemption under Title IX. Id at 1408.

substantial relationship. Similarly, the school board in Detroit could argue that its all male and all female academies offered the same benefits to all students and thus, did not deny an equal educational opportunity to anyone. Further, the Board could cite VMI for the proposition that camaraderie and special accommodations and interests for males are important goals that should be taken seriously. Many of the people I interviewed for this paper mentioned the need for boys to learn from men in an atmosphere free from women. (see next section). Thus, based on Vorchheimer and VMI, the Board could have a plausible argument for separate public schools under both the Constitution and Title IX.

The Parental Right to Control the Education of Their Children.[221]

The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize him and prepare him for additional obligations.- Pierce v. Society of Sisters, 268 U.S. 510,535 (1925)

The Supreme Court first articulated the right of parents to control their children's education in 1923. In Meyer v. Nebraska, 262 U.S. 390 (1923), the Court invalidated a state statute which prohibited the teaching of foreign languages to children before they had reached the eighth grade. The state asserted that it had a right to make sure that its children were educated in English, and the Court found that this was a legitimate state interest.

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[221] Many commentators have argued that there is a right to a minimally adequate education, a topic that is a separate paper unto itself. The Supreme Court has refused to recognize a fundamental right to an education, see Rodriguez supra, but it has sent mixed signals about the importance of education. For example, in Plyer v. Doe, 457 U.S. 202 (1982), the Court ruled that because of the equal protection clause Texas could not deny an education to the children of illegal aliens. The Court stated that though "public education is not a right granted by the Constitution. . . neither is it merely some governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction." Id. at 221. I have chosen instead to discuss briefly the right of a parent to control his/her child's education.

However, the Court also found that the statute interfered with the teacher's First Amendment rights and the parents right to control their children's education. Id. at 401.

Two years later, the Court struck down a statute which required children to attend public schools (vs. religious private schools), stating that the law interfered with the "liberty of parents and guardians to direct the upbringing and education of the children under their control" under the Fourteenth Amendment. Pierce v. Society of Sisters, 268 U.S. at 534-535.

Most cases in which parents have sued over the right to control education have involved freedom of religion issues. In Wisconsin v. Yoder, Amish parents sued to keep their children out of the public schools after a certain age because the teachings in the public schools contradicted both their religious beliefs and their entire way of life. 406 U.S. 205 (1972). The Yoder court balanced the state interests and found that the parent's rights of free exercise of religion weighed more heavily in the balance.

Yoder is important for two reasons. First, it is the most recent major case decided by the Supreme Court dealing with competing rights between parents and the school. Second, Chief Justice Burger did not decide for the parents because of their right to control their children's education. Rather, he based his decision on the parent's right to freely exercise their religion. In fact, in dicta he pointed out that the religious claim was the overriding factor in the decision. Id. at 215-216. Nevertheless, many courts cite the case for the proposition that parents have a right to supervise the educations of their children.

Just as children do not have a fundamental right to an education, it appears that parents do not have a fundamental right in controlling the education. Though modern cases continue to cite Meyer and Pierce for the proposition that parental rights have importance, there is no indication that those rights are

fundamental.[222]

Most modern lawsuits dealing with parental rights and school have concerned religious freedom, compulsory attendance laws or private schools. The cases have generally balanced the interests of the state and the parents. In all cases conducting this balancing test, the court acknowledges the power of the state to regulate the schools and set the curriculum. However, research has not produced any case where the parents and the school board agreed on a course of action, but were denied by a court, with the exception of, ironically, state and parental resistance to integration.

Should Parents Have the Right to Control The Educations of Their Children?

While the parents in Meyer, Pierce, Yoder and other cases fought the school board and the state for the right to control education, in Detroit and Milwaukee, the majority of the parents were on the same side as the state. The question becomes then, as Superintendent McGriff stated, who should have the right to control education? If the federal courts and housing patterns make it almost impossible to desegregate a school, should the law preclude the parents and the school board from experimenting with an educational practice that may save their children's lives?

Though Judge Woods, NOW and other opponents of the schools

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[222] See eg Clonlara v. Runkel, 772 F. Supp. 1442 (E.D. Mich 1989) (arguing that Meyer and Pierce did not use the strict scrutiny reserved for fundamental rights cases); Hanson v. Cushman, 490 F. Supp. 109 (W.D. Mich. 1980) (plaintiff has no fundamental right to educate child at home without complying with state standards); Stough v. Crenshaw County Board of Education, 579 F. Supp 1091 (M.D. Ala. 1983) (the right of a parent to make decisions concerning the education of his child is a basic right protected by the Constitution, but the right is not absolute, and a state may impose regulations regarding the quality of education that a child receives); Sheck v. Baileyville School Committee, 530 F. Supp. 679 (Dist. Me 1982) (parents do not surrender their right to control the education of their children by enrolling them in public school, except to the extent that the prescribed curriculum serves legitimate educational purposes).

have argued that there is no proof that separating children by sex will save black males, and that may be true, that does not mean that poor parents should not have the opportunity to opt of the coeducational public school system, as rich parents do.

One problem with the entire debate is that the proponents of the all-male schools have framed the issue by arguing both implicitly and explicitly that all-male academies can save black males from the problems in the community. As previously argued, though education is one means of escaping a life of poverty, racism, hopelessness, unemployment, crime and other pathologies work to destroy the black male as well. Thus, the proponents should have argued more in terms of parental choice- which they did- and less in terms of the academies being a cure-all for the ills of the black community.

However, the posture that the boards took was probably due in part to the legal requirement that the boards have an "important governmental interest" with means which are "substantially related to achieving these objectives." Since the courts have refused to find that education is a fundamental right or that parents have a fundamental right in controlling their children's education, the boards may not have had any choice. Though the parental choice argument is a compelling policy argument, it is a weak legal argument.

Harvard Law Professor Derrick Bell has stated that the issue is "not a legal issue, but a policy issue."[223] Therefore, in the next section I will further discuss the policy ramifications of the all-male/separate schools and the methods of educating at-risk black males in general. I will consider the policy issue by exploring public sentiment and discuss the results of my interviews with educators and experts in the field.

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[223] Personal Communication.

PART IV- POLICY CONSIDERATIONS AND PUBLIC SENTIMENT

THE POLICY IMPLICATIONS

To reintroduce race and sex-based segregation as a legitimate structure for public school education is a 180 degree change in direction for social and educational policy. The change is one with extremely high risks. It would legitimize the very mechanism that was used so effectively to hinder and disadvantage generations of African Americans. Once established, it would hand over a powerful tool to those who may not have the best interests of African American children at heart and will be difficult, if not impossible, to control or undo.- NAACP Legal Defense and Educational Fund [224]

It is amazing how the ACLU and the NOW organizations are against the "Male Academy," but not the male academy of special education, the male detention school, remedial reading, suspensions, dropouts and inmates . . . It concerns me that many "Negro" educators said the Male Academy would return us to segregation. I wonder when was the last time they visited Detroit's or any other city's public schools. . . African American boys were segregated before the Male Academy. . . The fundamental question is: Do African Americans have the right to determine what is in their best interests?- Jawanza Kunjufu, author of the Countering the Conspiracy to Destroy Black Boys [225]

As mentioned in the introduction, cities all over the country have considered the possibilities of opening all-male schools or classes. Baltimore and Norfolk already have all-male classes, which have shown successful results in a short period of time.[226] In Norfolk, the school teachers report that discipline, confidence and grades have improved.[227] The Baltimore schools have not been subject to legal challenge, in part because some of the schools have instituted all-female classes with mentoring programs as well.

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[224] NAACP Legal Defense and Educational Fund, Statement on Proposals for Separate Schools for African American Male Pupils, (1990).

[225] Kunjufu, The Male Academy: In Whose Interest?, The Black Collegian, November/December 1991

[226] Personal Communication with Carter Bayton, teacher and Addie Johnson, Principal.

[227] Ho, Not by the Book: Norfolk Splits Sexes, The Virginian-Pilot, December 9, 1991.

In addition, Maryland's attorney general has allowed the experiment.[228] However, NOW and the ACLU have criticized the Norfolk schools stating that "the school district is setting itself up for being reprimanded" and argue that the gender specific subject matters taught in the classes perpetuate the stereotypes that Title IX meant to eradicate.[229]

The Objections

As this issue continues to be addressed, it might be wise to reflect on the relative ease with which self-appointed do gooders such as the ACLU and NOW, supported by an oppressive federal judiciary, are able to undermine, to the detriment of the children, the legal and prudent decisions of elected officials and parents.- Frank Hayden- current president of the Detroit Board of Education.[230]

NOW and the ACLU have not been the only critics of the proposals. The nation's largest teachers union states that "there is not one shred of empirical evidence about how these programs work, nor can [it] discern any plans for objective evaluation."[231] The Children's Defense Fund also objects stating, "we acknowledge the academic failure, joblessness, crime and death plaguing African American men and boys, yet we cannot support the establishment of race and sex segregated classrooms or schools in the public sector."[232] The CDF questions the legality of the plans; the diversion of limited public funds toward a "tiny population of students at risk for school failure"; and the "divisive" and "non-productive" implications that the presence of females in the

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[228] Id.

[229] Id.

[230] Hayden, Rationale Behind Male Academies Dictates Legal Pursuit of that Goal, Detroit Free Press, September 9, 1991.

[231] Letter to me from Bella Rosenberg, Assistant to the President of the American Federation of Teachers, December 13, 1991.

[232] Draft Statement provided at my request by Denise Alston of the Children's Defense Fund. December 4, 1991.

classroom rather than economic and social conditions cause failure among black men.[233]

In addition, the NAACP, one of the most influential black organizations in America has called the plans a return to segregation and a danger to the goals of the civil rights struggle. The NAACP Legal Defense and Educational Fund ("LDF") has released a 21 page position paper in which they state their objections to the proposals. Their objections are essentially the same as the objections of other critics, therefore I will detail those objections to avoid repetition of the objections of other groups or individuals.

As stated above, the organization fears that the success of the programs, or even the suggestion of the programs by black and white educators will undermine the efforts to desegregate the schools and to desegregate the special education and other remedial classes.[234] Second, the LDF argues that the academies would deny the benefits of positive male influences and multicultural curricula to females and all other students in the districts who also need help.[235] Third, the LDF asserts that there is no evidence that race or sex segregated schools "will be educationally or developmentally superior."[236] Fourth, the LDF worries that rather than blaming the system, the proposals send an underlying message to the boys that they are the problem, thus stigmatizing them. Finally, the LDF observes that "it is difficult to imagine how such programs can co-exist with federal civil rights statutes enacted after hard fought battles, that prohibit recipients of federal funds from segregating or treating students differently on the

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[233] Id.

[234] NAACP Legal Defense and Educational Fund, Statement on Proposals for Separate Schools for African-American Male Pupils, (1990).

[235] Id at p.3

[236] Id. at 4.

basis of their race and sex."[237] The LDF does support mentoring programs, a stronger multicultural curriculum, the elimination of gross overrepresentation of black males in special ed, and other components of the academies.

Of course, organized groups have not been the only nor the most vocal critics of the plans. Kenneth Clark, a psychologist whose doll experiments helped to convince the Supreme Court that segregated schools stamped a "badge of inferiority" on black students has long been a public critic. He has called the proposal a "damaging psychological procedure" which is a "shameless," "flagrant" "violation of Brown."[238] Governor Douglas Wilder has said that the schools would not help because they would send the message that blacks should be treated differently. He would prefer to funnel the money into Head Start and other intervention programs such as mentoring, role models and community support systems.[239] Diane Ravitch, Assistant Secretary for Educational Research and Improvement for the Department of Education, speaking of the Ujaama Institute in New York, mocks the schools' goal of raising self-esteem and argues that the schools would mean "repudiating the old-fashioned idea that the mission of public education is to help everyone become members of the same society."[240] Primus Mootry, co-founder and director of Corporate/Community Schools of America, which raises corporate contributions to set up tuition free private inner city elementary schools, calls the programs "smoke and mirrors" and questions why the curriculum changes, uniforms and

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[237] Id. at 4.

[238] Experts Dislikes All-Male Schools He Played Key Role in '54 Brown Ruling, Detroit Free Press, February 24, 1992; and New York Forum; Will Ujaama Do Justice to Black Boys, New York Newsday, January 16, 1991.

[239] Reynolds, Education, Values Key to Helping Black youth, USA Today, April 11, 1991, 13A.

[240] Id. New York Forum, Note, Ms. Ravitch made her statements before she was appointed to the Department of Education.

other innovations can't be implemented in all schools.[241]

But many others in the public eye support the schools. President Bush, who has proposed school choice as an alternative to the present educational system, has endorsed the all-male schools stating that if the laws need to be changed to accommodate such schools, then "we ought to do it."[242] Secretary of Education Lamar Alexander has also expressed support for "new innovation," though he had previously stated that the academies violated Brown, which "is simple and to the point."[243]

Though minds differ on the merits of the schools, I believe that the people most qualified to discuss the efficacy of the schools are those who work with black children everyday. Therefore, the next section discusses how educators in the field feel about race and sex segregated education.

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[241] Personal communication on March 13, 1992.

[242] Gilchrist, Bush Backs Single Sex Schools. Change Laws if Need Be, He Says, Detroit Free Press, 1A

[243] Id.

The Educators[244]

It is risky to adopt a policy that seems to hark back to segregated schools. The fact is, young black males in the inner city are already facing far greater risk. The remedies we hailed [in Brown] . . . have proven irrelevant to the condition of pubic education in minority schools. Thus, if those who are concerned about our most needy minority children feel that education within what will be race and sex segregated schools can be effective, then such policies are at least worth a try.- Derrick Bell, Professor of Law Harvard Law School and formerly an overseer of over 300 school desegregation cases at the NAACP Legal Defense Fund [245]

I spoke to several educators around the country, some in favor of the plans and some opposed.

1) **Carter Bayton** and his all male class have received national attention. In addition to stressing academics, Mr. Bayton uses male role models provided by Spencer Holland's Project 2000 volunteers. Last year, Mr. Bayton's first graders stunned educators by reading at or above grade level under Mr. Bayton's guidance.

2) **Ms. Addie Johnson** is the principal at Robert Coleman Elementary School, where Mr. Bayton teaches. She proposed all-male classes in her 99.9% black school after seeing the "genocide" among black men.

3) **Dr. Spencer Holland**, one of the first proponents of separating children by gender, runs the Center for Educating African American Males at the School of Education. His Project 2000

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[244] I asked the experts questions about Afrocentric education; the need for role models; the special needs of black children; the efficacy of single sex education and single race education; different learning styles of black and white children; and finally, their opinions on the all-male academies. The following are excerpts from the interviews. Please see the Appendix for full text of the interviews and more about the various programs involved.

[245] Personal communication.

volunteers work in several cities around the country.

4) **Mr. Basir Mchawi** is the architect of the Ujaama Institute in New York. The Ujaama Institute, scheduled to open in September 1992, will be a coeducational Africa centered Multicultural Alternative High School. The Institute will serve the needs of both African and Latino students, and particularly, black males.

5) **Mr. Wally Shabazz**, of the Tampa Urban League directs the TRUST program, which serves black boys ages 10-18. The TRUST program, working with the Tampa public schools, includes a 14 week after school program, a 10 week curriculum with separate schools within the schools, and an Afrocentric Rites of Passage.

6) **Mr. Walter Smith**, teacher at the Monnier School in Detroit, heads the Save a Star Leadership Program for black boys. The program has led to decreased hostility levels, higher attendance rates and less disciplinary problems both in and out of school.

7) **Mr. James Hargett**, director of the Helping Hands Program in the Wake County Public School System, pairs black boys with community and peer mentors and personal models (Black male educators). The program has won the Governor's Award for Programs of Excellence in Education.

8) **Dr. Alvin Poussaint** is associate professor of psychiatry at Harvard Medical School and a nationally recognized expert on black children and families.

9) **Dr. Jeff Howard**, founder of the Efficacy Institute, is an educational consultant to school boards around the country, including Detroit's.

10) **Carol Ascher** is a senior research associate at Teacher's College/Columbia University. She has a Ph.D in anthropology and education and has worked with ERIC since 1974. Her main area of study is urban education as it relates to black children. She has recently published a monograph on school programs to help at risk African American Males.[247]

11) Finally , **Dr. Cornelius Riordan** is a nationally recognized expert on gender and race segregated schools. He has written a book entitled Girls and Boys in School, Together or Separate?, in which he examined statistics on achievement levels of minority children in Catholic and non-parochial schools.

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[247] I owe a special debt to Ms. Ascher. Though I have only quoted her briefly in this paper, she has provided invaluable assistance, and I was able to contact many of the people I interviewed after reading her monograph.

Do you believe that there is a need for Afrocentric education?

Hargett: Students need heavy doses of history and culture, but it does not have to be done in isolation. Our program has been very successful and operates after school and weekends. I don't believe personally or professionally that the academies are a good idea. [But] we do need to educate our youngsters about our history. They need to know where we've been to know where we're going.

Mchawi: We feel that by looking at the same historical events from the African perspective, we will encourage the students to have a critical dialogue. We will confront the untruths that the students have previously been taught, and force them to do research and question what they have been told. Today, Africans are seen so negatively that no one wants to be African. We want to put Africa in historical perspective.

Smith: We have such a curriculum in the leadership program. We are all different colors but we all have minds. These kids are our future warriors . . . These boys need to be more initiated into our culture. We want them to realize their blackness and know that blacks have done important things.

Do you agree with the theory proposed by Ken Holt and others that black and white children learn differently?

Mchawi: I don't think that there is enough research to support that yet. But based on what we know of child development, young children of color develop more quickly than white children. There is a lot of research that supports that. But, there must be more research to learn how that faster development manifests itself in terms of different learning styles. Until that research is done, we must look at individual learning styles.

Johnson: Young black males tend to do things on a holistic approach. Kunjufu and others have learned that black boys have a thematic approach to learning. A child will learn better if there is a connection between what he's learning in different subjects.

Bayton: I never went to school with white children and I have never taught them. Black students need motivation. They need a will to learn and a reason to want to learn. The difference between white and black children is that they [whites] have parental guidance at home. Black students don't have very good at home environments or the extra encouragement they need to keep them going.

Hargett: No, I don't believe that. All cultures have different values and belief systems, but I don't think that the races have different learning styles, individuals do. . . Some teachers have a mindset of expectation of what students can do based on race and

economics.. . . Teachers need to find the key to unlock each child's particular style.

Do you think that boys learn better when they are separated from girls?[248]

Riordan: We found that in general, both males and females achieved significantly greater gains in test scores, environmental controls and leadership opportunities. . . These results hold true even after [control variables] are applied.. . The fact is that there is consistent evidence globally that single sex schools are more effective than coeducational schools, especially for females. I have added the minority situation to the research.. . The basic reason that sex separation is better for minorities than for whites is that there is evidence that school makes the greatest difference for people who have the greatest need for school, because they have handicaps, largely cultural, which exist because of historical patterns of discrimination- namely females and minorities.

Poussaint: I think that boys might learn better without girls in the classroom, but we don't know enough . . . Boys and girls have different needs. . . Boys are more aggressive than girls, generally, and they're socialized differently, particularly in those communities where there is an absence of fathers. . . If they had their own school . . . you could get the boys to satisfy their male hunger needs. You could make education appear more masculine. . . I also feel that a lot of aggressive, violent activity and antagonistic relationships between students has a lot to do with boy-girl interactions and jealousies- even at an early age. . . The same sex schools would eliminate the distractions.

Howard: Girls tend to do better and boys tend to do worse across the board. It's a difference in behavior. . . But in these big city high schools, the distinction between boys and girls and how they're doing is not very large. They're all dropping out.

Hargett: Total sex segregation is not necessary. Young boys need the enrichment of females as well as people from all cultures.

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[248] Though NOW objects to single sex education in public schools, it cites numerous studies in its position paper detailing the success of single sex education, including Cornelius Riordan's. The NOW paper states that "international studies begun in the 1960's across a variety of cultures, including several within the United States, reveal that students in single sex schools consistently outperform students in mixed sex schools in mathematics, science and reading ability." NOW position paper p. 22, citing Patricia A. Bauch, Differences Among Single Sex and Coeducational High Schools, Momentum, April, 1988.

There should be additional positive activities for black males on a long term consistent basis. But, I don't like isolating kids by gender or race as a prerequisite for learning, or a requirement for learning.

Bayton: You can read all of the clippings in the media, but believe me, it's definitely not easy teaching a class full of boys. . . I think that the class has been successful because of a combination of the boys working hard and the sex segregation. The class might do as well if there were girls in the class because I would make sure that the boys produced.

Many critics of the programs worry that the schools will foster sexism.

Ascher: That's a curriculum issue. They can teach sexism or they can use the period of being alone to work out issues without telling the boys that they're superior.

Holland: Look at the way that black men treat black women today! Do you think that it could get any worse? .. . Men teach boys how to interact with women. All inner city boys learn initially how to treat a woman by watching how their mothers allowed the man . . . in their lives to treat them . . .Inner city boys are learning negative lessons about how to treat women right in their own homes!

Mchawi: Traditionally, we have had more egalitarianess in our communities than in the white communities. We have had great women in our history . . . you don't see corresponding figures in the white community. However, I am concerned about the new brand of sexism which is illustrated in the misogynist rap songs. . . Thus, to combat this we need a co-ed environment where young men and women can hold a dialogue. But I am not opposed to the idea of all-black, all-male schools because they are dealing with elementary school populations.

Many like Spencer Holland argue that only a black man can teach a boy to be a man. Do you agree, and what does this say about black women teachers?

Holland: You (to me) can't teach a boy to be man. . . You haven't had the experience to deal with the issues that a boy will have to deal with. . . These women who say that they have raised boys by themselves should back up and see that . . . some man [relative, friend] helped. . . Inner city boys are reluctant to model their behavior after women. These kids come from a very macho background where they don't see men reading. They don't want to look like punks and sissies. . . In the inner cities, the majority of the boys are coming from single parent households. The caretakers in their homes are women and when they get to school, they see nothing

but women teachers. They just ignore the instruction coming from female teachers.

Johnson: Yes I [agree]. Females have things stacked up against them. . . I have heard so many men who are incarcerated say that they could have gone right if they had a male to set them straight. It's nothing against their mothers, but they need a man around.

Bayton: A lot of females can teach black males, but it hasn't really worked. That's why there are so many men in the jails. The women have problems with one or two boys, so imagine having a class of 25. The males don't give the women the respect.

Ascher: Being able to teach and being a role model are two different issues. I don't think that women can't teach, but I think something's added when the teacher is a man. There are psychological issues that black boys have, problems that could be taught by men such as violence, male identity and conflict resolution.

Poussaint: It is very common for black boys to see learning . . . as a feminine activity, especially when they already feel under threat of being a man because of the absence of male role models. The schools need to have men present as teachers and administrators to show that getting an education is masculine. They especially need to see black men in positions of power so that they don't think that white people are running everything.

With all of the talk about the need for black male role models, do you believe that a white teacher can teach black children as well as they teach white children?

Bayton: Some white teachers can teach black children but a lot have a hard time because they can't relate and can't reach them. .. But with the right kind of training, the white teacher can do as good a job as the black teacher.

Johnson: I don't think that it would make a difference . . . as long as he treated them fairly. I do think that a black male should teach black boys at an early age, but kids don't come to school with these prejudices. The kids don't see the color.

Holland: In Project 2000, I train men to be volunteers. White men are part of the program because little black children are not bigots.

Poussaint: A white male teacher who was insightful and sensitive could be very effective in the schools.

What do you think of the all-male schools? Are you in favor of them?

Shabazz: Yes, Catholics do it all the time. . . Men and women know how to interact naturally . . . Parochial schools have the best education in this country. It has been demonstrated that [sex segregation] works. . . [But] last week a 15 year old went to [his] school and shot a kid because they had an argument. If it had been an all-male school, it would have been the same thing. What are we doing about the values that these boys are carrying that human life is not worth anything? You don't change that in the schools, you change that in the communities.

Ascher: I think that there is a crisis situation among African-American males. There's a need for every experiment that everyone can conceive of. [People are worried about the possibility that if these schools are allowed then other groups will get their own exclusionary schools.] White supremacists already have their schools. . . And the general curriculum could be described as "white." The fear is one that is not for the future. It already exists. . . This experiment was one that was initiated within the African-American community. It's what the community itself came up with and is a strongly supported grass roots movement. . . I'm disappointed that the Detroit Board caved in the way that they did. It strikes me as extraordinary as against all legalities there has been segregation for years and mistreatment of black males with illegal expulsion rates. No one has been outraged by these illegalities. . . We have the right under American law to equal educational opportunity. If you have rates of special ed. that are way out of proportion to the number in society, it's illegal discrimination.

Mchawi: Many people who criticize the all-male schools do not criticize single sex schools which already exist, such as those for pregnant girls. . . We already have all-male, all-black classes in the special education programs and those for the mildly retarded.

Hargett: I think that single race, single sex schools may send the wrong message because it may tell kids that they can't learn in mainstream society. Our kids [in the Helping Hands Program] have been able to compete. Students must be able to deal with all segments of society.

Howard: I went to an all-boys school. . . They should do whatever necessary to make sure that girls get equal treatment. The bottom line is that I respect the initiative. I think that it could be effective. But I think that it flies in the face of things that we did thirty years ago.

Bayton: I know that the Detroit plan would have worked. Look at the private, single sex schools. They have been producing top students for years. Look at my students.

Poussaint: Yes, but I would have been more strategic. I would have made it clear that the object was not to keep anything from females. I would have said let's try it. There should have been an opportunity to see how these schools would have worked. I think that it's worth a try.

Riordan: I am not in favor of just male academies. I'm in favor of allowing a school system the opportunity to establish on an exploratory basis single sex public schools for males and females.

Smith: I think that the schools would have been great. The boys and girls needed to be separated because the boys are suffering more than the girls. The solutions of the problems of yesterday will not work for the problems of today. We are dealing with a totally new breed. We need to change even if the laws have not.

THE "IDEAL" SCHOOL

I think that we can see that in school systems and in schools where there have been quality education, people will come. . . If you build a system that provides a product that will educate children right, then desegregation becomes a non-issue, because people will come from all over the communities to participate.- John Jacob, President of the National Urban League, when asked about his position on the current status of integration.[249]

After speaking with several educators and experts in the field, I have learned that the current method of educating African-American children does not work. Though black females fail more often than white children, the evidence cited in the preceding sections proves that the system fails black boys more. The failure has dire consequences which many black females do not face including higher murder and suicide rates, and alarming incarceration rates. Through my research I have also seen certain themes repeat,[250] and with those in mind, and considering my limited knowledge about the educational field, I believe that the "ideal" school for educating black children would contain several of the components of the Milwaukee and Detroit school plans, as well as some others.

First, the evidence shows that single sex education is an effective method of teaching young black boys. Carter Bayton's class has shown marked success, and Professor Riordan and NOW have both found that single sex education provides a better education than coed education for both boys and girls. In fact, as we have seen, girls perform better than boys in single sex settings. Thus, school boards should have the option of implementing single sex classes, as the school board in Baltimore has, or implementing single sex public schools, as currently exist in Philadelphia.

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[249] Statement of John Jacob, President of the National Urban League at the National Urban League State of Black America Press Conference, January 21, 1992. Transcript. Federal Information Systems Corporation.

[250] I admit that much of the "evidence" is anecdotal, but many of these programs are too new to have gathered substantial data.

The establishment of the single sex classes or schools would allow parents and school boards autonomy over their children's education, and since Dr. Riordan's research shows that single sex education benefits minorities more than whites, poor, minority parents should have the option to utilize an educational method which has proven efficacious in minority communities and in rich, white communities (i.e. private, single sex schools).

For public policy reasons, poor parents should have the opportunity to opt out of the inadequate public school system, just as rich parents do. Though there are other factors in addition to the sexual demographics of the schools which helps private single sex schools excel, evidence shows that the single sex factor plays a crucial part. In fact, as Patricia Bauch found, coed Catholic schools are not much better than coed public schools--- it is the single sex aspect of the school which benefits the children.[251] Though more research needs to be done on the effects of single sex schooling on minority children, the research which we do have is encouraging, and my research did not produce evidence stating that single sex education harms children.

Further, since school funding schemes do not afford poor parents the benefits of the resources which "rich" public schools have, poor parents should be able to adopt proven educational features, which do not increase cost- as single sex schools would not- to give their children every possible educational advantage.

Legally, as we have seen, forbidding students of one sex to attend a school is a violation of Title IX and the Constitution. Thus, the school boards should state that the purpose of the school is to help "at-risk" males or females, stress the types of programs to be offered, and open enrollment to all students. This strategy worked in Detroit in part because of community pressure-- 80% of the applications for the new Jameson Academy are female, and the overwhelming majority of students in the existing academies are

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[251] Bauch, Paper Presented at the Annual Meeting of the National Catholic Educational Association. March 1989.

male. More importantly, school boards must be sure to grant the same types of "benefits and aid" to students at the male and female schools to avoid Title IX problems. Thus, neither school could have a superior math or science department unless it was established as a magnet school to excel in those areas. Both schools should implement the curriculum changes I will discuss shortly to avoid one set of students graduating from school with a superior education.

Schools which do not want to take the drastic step of becoming all-male should be free to institute single sex classes in the schools. This could achieve the same results of having less distractions in the classroom and allowing a focus on each sexes' special needs and learning styles as discussed by the panelists in the last section. Schools in Baltimore have tried this with successful results.

However, no all-male or all-female school in an all-black district will succeed with the traditional curriculum, which minimizes African-American history, because the single sex component of education is not enough to educate the children. According to anecdotal evidence, a multicultural education, or a balanced Afrocentric education appears to have the effect of increasing test scores. But, though it is too soon to rely on the preliminary evidence as an indicator of the future success of the students, a curriculum implementor should take into account the fact that many children with a multicultural curriculum have expressed an increased desire to learn.

Furthermore, my research has shown that the presence of positive male role models and mentors early in the educational process is a crucial component to the academic and social development of both boys and girls. Schools could implement Project 2000 or "Helping Hands" male role models program or others like it, but those male role models must be in both the male and the female classes. Since the public schools, and especially at the primary levels have become so feminized, and because young boys in inner cities do not see males reading or seeking a diploma as often

as suburban children do, these boys should receive priority in the allocation of the male role models if the resources are scarce. Schools could get volunteers from the local colleges and high schools, the business community, churches and the rank and file blue collar workers who have achieved high school diplomas. However, all of the experts I spoke to agreed that while a black male was preferred, a non-black male would suffice because young children are not naturally bigoted.

Further, though it is legally controversial[252], school districts should make affirmative efforts to hire more black male teachers because both boys and girls need to see learning as a gender-neutral activity. Though the role models are important, it is more important for the students to see a strong male presence on a daily basis. Moreover, since it is crucial that the students see black males in positions of authority in the schools, policy makers should make affirmative measures to hire and retain more black male school administrators.

In addition, the schools should mandate parental participation in their children's educations which goes beyond the sparse attendance at PTA meetings. In Milwaukee, as previously mentioned, teachers are required to make home visits, thus keeping the parents informed, but parents should take a more active role. The Comer Model,[253] named for founder James Comer of Yale, has proven successful in districts around the country in part because it has

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[252] See footnote 214 supra for a discussion of the Wygant case.

[253] Comer began the experiment in 1968 in New Haven with two schools which were last in academic achievement in the district. Using a school management team made of teachers, principals and parents and a mental health team made of nurses, counselors and psychologists, the original Comer schools are now 3rd and 4th in the city. The program has been used by at least 9 school districts and more are considering implementation. Goldberg, One Way to Help Ailing Schools, Washington Post, April 8, 1990. Also Thomas, 4 West Side Schools Test New Model, Chicago Tribune, May 7, 1991, p. 1.

utilized parental resources.[254] The schools employ management teams which include teachers, principals and parents. Many schools set up libraries or "family learning centers" in the schools so that parents can learn to read and thus help teach their children.[255] The idea is based on the premise that if parents are enthusiastic their children will also be enthusiastic.

However, the school boards must make parents interested in the project and mandate participation if they expect to get parents who may work two jobs or be undereducated to come to the school. Teachers whom I surveyed report overwhelmingly that "poor home environment" is the number 1 reason that black children lag behind whites in academic achievement. Thus, parental involvement, tailored to the needs of the student and the limitations of the family, is critical in achieving academic success.

Finally, the ideal school and even those not choosing to implement these suggestions must eliminate the tracking of students by ability level. Statistics in the "tracking" section supra at pages 24-26 of this paper show that tracking has deleterious effects on young black males by preventing them from participating in challenging or even mainstream classes. This path can only diminish an interest in learning and perpetuate the failure rates that prevent black male achievement.

Instead of tracking by ability levels, schools should try alternative methods of teaching children with different talents. For example, they could implement cooperative learning techniques which are in place in many schools around the country.[256] Through this method, teachers assign children of varying ability levels to

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[254] Stearns, Fast Forward Learning, Washington Post, May 8, 1991, A31.

[255] Sanchez, The Mystery of a School in Crisis; D.C. Elementary Beset With Problems, Hoping for a Cure, Washington Post, October 1, 1990, A1.

[256] Personal Communication with Reuben Harpole on January 31, 1992.

sit together and then ask them to solve a given problem, telling them that there is no correct answer, thus diminishing the possibility of embarrassment in front of peers (a prime reason that black males do not speak in classes with girls, according to my interviewees). The teacher then moves the students to different tables and students must defend the answer from their previous table or compromise with their new group. At the end of the allotted time, each student has a clear understanding of the issue and can present it to the class. Teachers should try this and other innovations-- through my interviews and limited research, I have found that there is no dearth of information about new teaching methods that work. Teachers and school boards should utilize each other as valuable resources of information to rid the curriculum of stale methods which do not appeal to today's urban children.

In Part I, I examined the state of black America, and showed the ramifications of undereducation in the political, economic, and social realms. In Part II, I examined the statistical data regarding integration, and pointed out that integration has not met the ideals of Brown because most black students are still in predominantly minority schools, and those in integrated schools are often in all-black low-track classes. In Part III, I looked at the Milwaukee and Detroit proposals, the legal challenges, and how they have fared in practice. In Part IV, I turned away from the legal issues and toward the policy implications. I have explored public sentiment and surveyed educators around the country to learn the "truth" behind the rhetoric, and whether the proposals would have worked or should have worked. In Part V, I designed an "ideal" school based on recommendations and my own research. In the final section, I will use what I have learned to draw some conclusions.

CONCLUSION

As we have long observed, 'local autonomy of school districts is a vital national tradition.' . . . When the school district and all state entities participating with it in operating the schools make decisions in the absence of judicial supervision, they can be held accountable to the citizenry, to the political process, and to the courts . . . Where control lies, so too does responsibility.- Justice Kennedy, Freeman v. Pitts, _____ U.S. _____ (1992), allowing federal courts to release formerly segregated schools from supervision before they have fully complied in all areas of the court orders to achieve unitary status.

Though many desegregationists feel that the Court in Freeman has proved that it is no longer committed to integrating the schools, the decision in fact shows that the Court will no longer require racial balance if it will force school districts to comply with court orders under conditions, such as housing patterns, which are beyond their control. Though the members of the Court may have had some hidden racial animus in loosening the grip of the federal judiciary on recalcitrant schools, it is more likely that the Court has realized that the school districts can only do so much to achieve racial balance in light of the many outside factors which affect school attendance.

More importantly, the Court echoed a familiar sentiment that duly elected school boards should have "local autonomy." The Court notably used this local autonomy argument (ironically) to prevent urban-suburban integration in Detroit's Milliken case.[257] Had the Court required the plaintiff's requested integration, preventing white parents and their financial resources from being able to escape urban children, perhaps the Detroit Board would not have had to request all-male academies today.

Since the Court is moving farther than ever from the direction of integration, I believe that school boards must use whatever means within their power to improve the educational lot of black children-- it is obvious that integration will not be a reality for most of America's black students.

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[257] Milliken v. Bradley, 418 U.S. 717 (1974).

School boards must be permitted to try new innovations because the current system fails to meet the needs of poor black children, especially boys. Though there is no guarantee that crime will stop overnight if an all-male academy goes forward, there is evidence that the all-male atmosphere, coupled with caring teachers and an inclusive curriculum, does raise chances for academic and social success. Since the current system does not work, school boards should be permitted to experiment with proven educational methods to see if they or components of the programs can be expanded to the larger school district population.

Moreover, the courts should not prohibit poor parents, who are stuck with an inadequate system, from sending their children to the school of their choice. If the schools open the doors to everyone but make clear that the purpose is to target a particular group, then parents should have the right to exercise that option-- rich parents already have the right to send their children to single sex schools via the private school system.

Finally, since the schools are in all-black neighborhoods, desegregation experts who protest the schools' implementation are off the mark. The Supreme Court has relaxed federal court supervision of desegregation in public schools, and public and governmental sentiment appears to be in favor of attendance at neighborhood schools. Though children in integrated schools appear to get a better education, that is only because the property tax scheme of funding schools leads to that result. If resources are allocated according to need and the recommendations suggested in the previous sections are implemented, there is no reason why all-black schools cannot educate black students as well as integrated schools.

Unfortunately, there is not enough evidence regarding the efficacy of single sex education and its long term effects on black boys. However, the research findings of Dr. Riordan and Patricia Bauch show that boys, and especially girls, benefit from the single sex experience. Perhaps these three to five year experiments can be a further research project from which experts and skeptics can

learn about the merits of such plans. An amendment to Title IX, specifically for such experiments, would solve part of the legal problem, provided that: the Board's attorneys could make a convincing constitutional Vorchheimer argument; the Board opened the schools to both boys and girls; and the Board provided similar programs in both the male and the female schools.

Since the Detroit and Milwaukee school boards cared enough about the fate of their black children to attempt drastic and revolutionary changes, they should have been allowed to prove the skeptics wrong. Unless there is a change in the laws, the educational community will never have a chance to know whether the experiments would have worked.